VOLUME XV. NUMBER 3.

Massachusetts Law Quarterly

FEBRUARY, 1930 (and Supplement)

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REPORT

OF THE

SPECIAL COMMISSION TO STUDY COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE AND RELATED MATTERS

APPOINTED UNDER RESOLVES OF 1929, CHAPTER 40

CONTENTS OF SUPPLEMENT

Issued Quarterly by the
MASSACHUSETTS BAR ASSOCIATION, 60 State St., Boston, Mass.

SENATE No. 280

REPORT

OF THE

SPECIAL COMMISSION TO STUDY COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE AND RELATED MATTERS

APPOINTED UNDER RESOLVES OF 1929, CHAPTER 40

(For Index see pages 3–5)

JANUARY, 1930

BOSTON
WRIGHT & POTTER PRINTING CO., LEGISLATIVE PRINTERS
32 DERNE STREET
1930

The Commonwealth of Massachusetts

JANUARY 25, 1930.

To the Honorable Senate and House of Representatives.

The Commission created under chapter 40 of the Resolves of 1929 to make an investigation relative to motor vehicle liability insurance and related matters presents herewith its report.

C. WESLEY HALE, *Chairman.*
ALBERT F. BIGELOW.
CLYDE H. SWAN.
DANIEL J. COAKLEY.
FRANK W. GRINNELL.
RUSSELL A. HARMON.
C. CRAWFORD HOLLIDGE.

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CHAPTER 40.

RESOLVE PROVIDING FOR AN INVESTIGATION BY A SPECIAL COMMISSION RELATIVE TO COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE AND RELATED MATTERS.

Resolved, That an unpaid special commission, consisting of one member of the senate to be designated by the president thereof, three members of the house of representatives to be designated by the speaker thereof, and three persons to be appointed by the governor, shall consider and investigate the recommendations of the governor relating to compulsory automobile liability insurance as set forth in his inaugural address to the two branches of the general court; the plans recommended by the judicial council in its fourth report for disposing of motor vehicle court cases more promptly and with less expense; and also the subject matter of the current senate documents numbered twenty-six, one hundred and thirty-one and one hundred and seventy-three, and current house documents numbered ninety-four, ninety-five, ninety-six, one hundred and ninety-three, two hundred and twenty-five, two hundred and fifty-eight, two hundred and fifty-nine, four hundred and sixty-six, eight hundred and sixty-seven, eight hundred and sixty-eight and nine hundred and ninety. *Said investigation shall be conducted with a view to recommending whether the present system of compulsory motor vehicle liability insurance should be continued, and if so, whether, in order to accomplish any of the results hereinafter specified, said system should be modified in respect to any of the particulars set forth in said recommendations, plans and documents, or otherwise, or whether said system should be superseded by any other system or arrangement therein or otherwise suggested, designed to carry out the purposes of said present system and at the same time to relieve and reduce the burden of expense on owners of motor vehicles, to provide for a more equitable distribution, geographically and otherwise, of such burden, to reduce the number of accidents and to eliminate or minimize such objections and defects in the said present system as may be found to exist.* Said commission shall hold hearings, may call upon the registrar of motor vehicles, the division of insurance and such other departments, commissions and officers of the commonwealth as have information in relation to the aforesaid matters for such assistance as may be helpful in the course of its investigation, may require by summons the attendance and testimony of witnesses and the production of books and papers relating to any matter under investigation, and may administer oaths to witnesses testifying before it. Said commission shall be provided with quarters in the state house or elsewhere, and may expend, after an appropriation has been made, for expert, clerical and other services and expenses, such sums, not exceeding in the aggregate ten thousand dollars, as it may deem necessary. The commission shall report to the general court the results of its investigations and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the senate not later than the first Wednesday in December in the current year. *Approved May 15, 1929.*

REPORT OF THE SPECIAL COMMISSION TO STUDY COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE AND RELATED MATTERS.

To the Honorable the Senate and House of Representatives.

Pursuant to the resolve printed on the opposite page, Honorable C. Wesley Hale was designated by the President of the Senate; Representatives Albert F. Bigelow of Brookline, Clyde H. Swan of Barre and Daniel J. Coakley of Chicopee were designated by the Speaker of the House; and Messrs. Frank W. Grinnell of Boston, Russell A. Harmon of Worcester and C. Crawford Hollidge of Milton were appointed by the Governor as members of the Commission. The Commission organized with Honorable C. Wesley Hale as chairman, and appointed Grover C. Hoyt as secretary.

Many public hearings were held, of which notice was published widely in the newspapers. Notice was also sent to the petitioners for all the bills referred to the Commission and to all persons who indicated a desire to be heard. The Commission also collected the motor vehicle laws of all the states and held conferences with officials of this and other states. Among these were the Insurance Commissioner and the Commissioner of Motor Vehicles of New Hampshire, the Commissioner of Motor Vehicles of Connecticut, the Insurance Commissioner and the Registrar of Motor Vehicles of Massachusetts and a number of their assistants and inspectors, the Administrative Committee of the District Courts, and others. The Commission also visited the "rating" bureau at No. 80 Broad Street, Boston, and conferred with representatives of that bureau, who explained the rating methods, which will be referred to later. We also visited the Employers' Liability Assurance Corp., Ltd., a large stock company, and the Liberty Mutual Company, a large mutual company, and John C. Paige & Co., a large general insurance

agency. In addition to the hearings and conferences we have received a mass of written material in the form of briefs, statistical tables, reports and discussions of various kinds. We have examined the reports of the special commission of 1920,[1] the commission of 1922,[2] the joint committee of 1925,[3] and other printed material.[4]

PRELIMINARY SUMMARY OF CONCLUSIONS.

The Commission has given every opportunity to all parties appearing before it, and has in no way limited their efforts to win approval for their favorite substitutes for the present insurance law. We have paid special attention to the advocates of the state fund plan, and to the arguments of the insurance companies and their representatives, all of whom were opposed to the existing law. Most of the insurance interests favored the so-called safety responsibility plan, somewhat along the lines of the New Hampshire or Connecticut laws or the A. A. A. Safety Responsibility Bill.

The Commission appreciates that the various forms of safety responsibility bills, as advanced by the insurance interests, have much in their favor, and that a number of other states have adopted this type of law. We recognize a certain value in having uniformity, so far as practicable, of laws affecting ownership and safety of operation of motor vehicles, even though it entails sacrifice of an ideal. On the other hand, the laws on this subject in other states are still experimental and are affected somewhat by local conditions.

As the Commission now understands the problem and the results of three years' experience with the present law, the Commission does not believe in giving up the substance of the experiment which this Commonwealth has found courage to try. On the other hand, the Commission believes that some of the phraseology and practice of the

[1] Senate, No. 322 of 1920.
[2] Senate, No. 285 of 1922.
[3] Senate, No. 285 of 1925.
[4] Including an address by the former Insurance Commissioner of Massachusetts, Clarence W. Hobbs, delivered in September, 1928, see p. 58 of this report, and a letter of former Commissioner Hardison in the "Boston Transcript" in September, 1929.

insurance companies in supplying information for the public has caused misunderstanding, and we recommend some striking changes in the existing law with the belief that the proposed changes will greatly facilitate the accomplishment of the real purposes inspiring the original act of the General Court, viz., the safety of our people and their indemnification for injuries caused by motor vehicles licensed by the Commonwealth.

We are unanimous in believing that the present law can be amended so as to accomplish its purpose more effectively, and accordingly, if the amendments which we submit are adopted, we feel that the insurance companies should submit to a further trial of the law rather than to urge the adoption of experimental plans adopted in other states. We also believe that, if the changes which we suggest are adopted, Massachusetts will in some respects take another step in advance of other states which have an equally large number of cars registered.

From the hearings before us and before the Insurance Commissioner in September on the proposed rates, we are convinced that there is much unnecessary misunderstanding on the part of many persons which results from the present rate-making machinery. While the law gives the Insurance Commissioner the sole power and duty to "fix" the rates, there seems to be a common impression that they are indirectly fixed in some undesirable way by the insurance companies through the medium of the so-called "rating bureau," which has been an object of attack in the course of protests against the rates of 1929 and 1930. For this reason we have prepared a detailed account (in Appendix A) of the whole history and method of operation of the "Rating Bureau" dating back to 1912, so that those who wish to know what it is and what it does may have the benefit of our study. We have inspected the bureau at 80 Broad Street, Boston, and carefully studied its system of operation. We do not find nor do we believe that there has been anything wrong about it, but a certain misunderstanding has arisen, largely from its name and other causes which can be avoided.

The present law places too great a burden of responsibility for fixing of rates upon the Insurance Commissioner, who has many other duties relating to other kinds of insurance. The fixing of "adequate, just, reasonable and non-discriminatory" rates is a difficult and complicated business task. Consequently, the Commissioner planned, and with the co-operation of the companies, created, the above-mentioned Bureau for statistical purposes. We believe that the plan was sound and that the Bureau is essential to intelligent rate-making. We recommend that the name of this Bureau should be so changed as to indicate more clearly its real character, and that the rate-making machinery should be revised under a Motor Vehicle Insurance Rating and Control Board, within the Department of Insurance, with the Commissioner as chairman.

Any insurance commissioner charged with the responsibilities which the Legislature has placed upon that official, and desiring to perform his functions with intelligence and fairness, would naturally avail himself of such suggestions as may be had only from men with training and actual experience in the business of insurance. Otherwise, it is difficult to understand how he could properly equip himself with the necessary information.

We oppose the repeal of the present motor vehicle insurance law of Massachusetts, but recommend many amendments to make that law more effective, and to check such abuses as may exist in connection with the making of claims for injuries.

We recommend the creation of a Rating and Control Board within the Division of Insurance, to consist of the Insurance Commissioner and two additional members, which shall fix and establish classifications and rates, and shall supervise the whole subject of motor vehicle insurance.

We recommend that this board take over the duties of the Board of Appeal.

There was, and is, a common impression that our present insurance law was adopted as a safety measure.

It was not. It was recommended and adopted, primarily, to provide indemnity for injured persons from irresponsible car owners who did not carry insurance. We believe that safety measures are an essential form of "preventive medicine" for the current disease of careless driving.

We recommend required inspection of the mechanical equipment of cars as a condition of insurance, and a system of "demerit" rating, as effective measures to prevent accidents.

We recommend that the Registrar of Motor Vehicles be authorized to employ such additional inspectors and investigators as he needs.

We support the recommendation of the Insurance Commissioner for more effective authority to check the operations of weak insurance companies before they become insolvent.

We recommend that the rates to be fixed by the Rating and Control Board shall be maximum rates, and that within those maximum rates competitive rating may be allowed, with its approval, by means of fleet rating, deductible policies, or blanket policies; and, further, that a system of demerit rating, under rules to be made by the Board and administered by the Registrar of Motor Vehicles, should be established along lines which have worked successfully in Connecticut. We believe this system of demerit rating to be peculiarly important in the interest of greater safety.

We recommend a new system of dealing with non-resident cars, so that the non-resident who expects to be here for more than thirty days, and who already has insured a car in another state under the form of policy known as "the standard form," may secure a non-resident registration by producing a certificate of such standard form of insurance, provided it is issued by a company authorized to do business in Massachusetts. This will make it unnecessary for a non-resident to cancel his existing insurance or to take out a new Massachusetts form policy provided they cover substantially the same thing.

We recommend a plan by which publicly owned cars and cars owned by charitable corporations may be brought within the scope of the present insurance act.

We have considered at length the subject of "fake" and exaggerated claims for personal injury. We recommend a number of changes in judicial procedure for the purpose of sifting such claims more promptly and effectively, on the ground that the best method of dealing with such cases is to provide machinery to expose the "fake."

The Commission calls attention to the increase in motor vehicle cases since the present law was adopted, and predicts that unless effective changes in judicial machinery are adopted to produce more prompt and effective action in the courts the whole class of personal injury litigation will be lifted out of the hands of the courts and the bar and turned over to some administrative body. The Commission believes that these cases should be disposed of in court, and that every reasonable experiment should be tried to enable the court to deal with them more effectively before resorting to the drastic step of removing them entirely from the courts.

Many insurance policies are cancelled for nonpayment of premiums, and, in consequence, the office of the Registrar of Motor Vehicles is made a collection agency for those who extend credit for insurance premiums. The Commission believes that those who advance insurance premiums should carry their own credits, without the assistance of the state as a collection agency.

We are opposed to every form of state insurance which has been suggested to us or called to our attention. We have discussed this subject at length in this report.

As to the compulsory monopolistic state fund plan, in our opinion it is not only unbusinesslike, unsound, inadequate and unsafe for the tax-paying public, for the rate-paying car owners and for the injured claimants, but we believe it would be absolutely unjustifiable to compel every car owner in Massachusetts to buy his insurance of the state, and to prevent or prohibit him from buying his insurance and insurance service as he now buys it,

in accordance with his business judgment and convenience. We believe that few people realize that this form of compulsion is involved in the proposed monopolistic state fund plan. It is important that every one considering this matter should realize this fully. We do not believe the citizens of Massachusetts want it.

As to the initiative "state fund" bill, the Supreme Judicial Court has decided that it is not a state fund bill at all. It is simply a bill to create a private or "quasi-public" insurance monopoly which would be run by a board of three managers who would fix "flat" rates for insurance for the whole Commonwealth, regardless of loss experience in different communities, and who would have the power to increase the rates so that the car owners of one year would have to pay for losses of car owners of previous years if the original rates were too low, as we believe the rates specified in the act to be. Each car owner, who would be forced to insure with this "fund" in order to put his car on the road, in case of accident would be liable to be investigated and prosecuted by representatives of the state who at the same time would be investigating and employing a lawyer to defend him against civil liability on the same facts. The bill proposes to use the Registrar of Motor Vehicles in such a way as to disrupt the Department of Public Works.

We believe this bill would be unworkable and would cause endless confusion for the car owners, the claimants and a number of the present state departments whose work would be interfered with. We do not believe that either the petition signers or the persons who feel interested in a "state fund" have the slightest conception of the effect which would be produced by the detailed provisions of the proposed "state fund" bills, either the one proposed by the initiative or the one numbered House 225 of 1929, which contains many provisions identical with those of the initiative bill.

A PROPOSAL FOR A MOTOR VEHICLE INSURANCE RATING AND CONTROL BOARD.

As already pointed out, the Insurance Commissioner is charged with the sole responsibility of fixing "adequate, just, reasonable and non-discriminatory" rates, with the classifications of risks for this purpose, as well as with the supervision of the financial responsibility of companies and the duty of taking steps to close them if they become insolvent. These are heavy responsibilities which seem to us too great to place upon one man in addition to the many other duties not relating to this form of insurance with which the Insurance Commissioner is charged. The Commissioner can be and has been subjected to public criticism based, in our opinion, on a public misunderstanding of the difficulties and responsibilities of his position.

Such a "one-man" system, with a statistical bureau misnamed a "rating" bureau, has, as already stated, caused misunderstanding and suspicion that rates and classifications are indirectly fixed in some undesirable manner by the insurance companies through the bureau. It was suggested to us that all the functions of the bureau should be taken over by the state, and we have expressed our opinion elsewhere in opposition to this proposal. But we do believe that the rating and classification system should be reorganized in such a way as to relieve the Commissioner of some of the responsibility which he now carries alone, and at the same time create a state rating board which will be better understood by the public, and that the present statistical bureau should be so named and its position so recognized that its purely statistical and advisory functions will be clearer than they are now.

Accordingly we recommend that there be created, within the Division of Insurance, a motor vehicle insurance rating and control board, consisting of the Commissioner of Insurance, who shall be chairman *ex officio*, and two associate commissioners appointed by the

Governor with the advice and consent of the Council, the first appointments of the associate commissioners to be made for one and two year terms, respectively, and thereafter each associate commissioner shall be appointed for two years. All classifications of risks, all rate regulation, authorization and supervision of companies writing the required motor vehicle liability insurance, and all questions arising from or affecting the operation of this form of insurance should be under this board.

Such a board could, we believe, render great public service by maintaining a more intimate contact with the motor vehicle owners, and at the same time find it possible to acquire a more intimate knowledge of the true experience of the insuring companies, thereby guaranteeing greater protection to the interests of both the policyholder and the general public.

This would, we believe, go far toward establishing rates which would command public confidence and eliminate much of the criticism leveled at the one-man system now provided by law.

The proposed board of motor vehicle insurance rating and control must have very broad authority. It must have power to require all authorized companies to file with the department, through the Automobile Bureau, complete information on pure loss costs and claim service expense in connection with all business written in Massachusetts. The board should be given authority to summon witnesses, compel the production of books, accounts, and contracts, and to send examiners into the home office or any and all branch offices of any company doing business in Massachusetts.

Maximum Rating.

We have heard much criticism directed at the principle of requiring the motor vehicle owners to purchase a commodity and at the same time fixing an inflexible price at which it must be sold. The fixing of inflexible rates and the compelling of insurance companies to

accept risks, even though they may regard them as unsafe, are two of the weak and unbusinesslike features of our present law. While there are reasons for retaining them to some extent, we believe that the law can be so modified as to allow more businesslike practice in the interests of the public, of the car owners, and of the companies.

We recommend that the proposed board shall, after due hearing and investigation, fix and establish fair and reasonable classifications of risks, and "adequate, just, reasonable and non-discriminatory" premium charges, which shall be the *maximum* premium charged and used by companies issuing or executing motor vehicle liability policies or bonds, except for demerit classifications hereinafter provided for.

All companies electing to issue or execute motor vehicle liability policies or bonds at a schedule of rates lower than that fixed by the board as a maximum for any classification of risk shall be required to first file the proposed rates with the board and obtain its approval of them. By requiring the approval of the board to rates below those fixed as maximum rates there would be but little opportunity for a company to cut rates to such an extent as to drive other companies out of the business. On the other hand, it would open the way to a company to select its risks and to offer inducements to fleet owners and individuals to exercise greater care of operation as well as an incentive to impose more stringent conditions upon fleet drivers.

Fleet Rating.

The board should also have the power to establish "fleet" classifications and provide for premium charges based on experience of each fleet.

Blanket Policies.

The board should also have the power to authorize the so-called "blanket policy" for owners and operators of three or more vehicles. The "blanket policy" au-

thorization should provide a medium for caring for the owner who carries one or more reserve vehicles for replacement of those regular vehicles unsafe for operation, or disabled temporarily, or not in use for other reasons. This would materially reduce the insurance charges to such owners and at the same time retain full protection to the public.

Insurance Appeals.

There has been much criticism about the construction of the Board of Appeal as constituted in the existing law. In justice to the individual members, the Commission desires to record here that it has heard no word of criticism against any individual member of the Board. The complaint is that certain members of the Board are forced to sit as judges and pass upon evidence submitted through the department of which the Board member may be the directing head. If the recommendations of this Commission be carried out substantially as proposed this opportunity for criticism will be eliminated and there may be a substantial increase in the number of appeals to be heard.

We recommend that the Board of Appeal should consist of the three members of the proposed motor vehicle insurance rating and control board.

We submit the following draft act:

Draft of An Act providing for a Board of Motor Vehicle Insurance Rating and Control in the Division of Insurance.

Section 1. Chapter twenty-six of the General Laws is hereby amended by inserting after section eight the following new section, eight A: —

Section 8A. — There shall be a motor vehicle insurance rating and control board serving in the division of insurance, consisting of the commissioner of insurance, who shall be its chairman, and two other members appointed by the governor, with the advice and consent of the council, for terms of two years. The associate members shall receive such annual salaries, not exceeding dollars, as may be fixed by the governor and council, and shall give their whole time to the duties of the board. The board may employ such clerical,

actuarial and other assistants as the governor and council may approve, and may expend such sums as may annually be appropriated for such use in the appropriation for the Division of Insurance. The commissioner or either associate shall have power to require the attendance and testimony of witnesses and the production of books, records, documents and such other data as may pertain to the performance of the duties of the board, and may administer oaths. Sections nine to eleven, inclusive, of chapter two hundred and thirty-three shall apply to the board and witnesses summoned before it, and the fees of witnesses summoned before the board shall be as provided in section twenty-nine of chapter two hundred and sixty-two, but need not be paid or tendered prior to attendance. Such fees shall be paid as aforesaid, upon the certificate of a member of the board filed with the comptroller. The board, with the approval of the governor and council, may make reasonable rules and regulations relative to procedure which shall be published.

SECTION 2. Of the initial appointees to the offices of associate members of the board provided for in the foregoing section, one shall be appointed for the term of one year and another for the term of two years.

SECTION 3. Section eight A of said chapter twenty-six inserted by section three of chapter three hundred and forty-six of the acts of nineteen hundred and twenty-five, as most recently amended is hereby further amended by changing the designation of said section to section eight B, and by striking out the first four sentences thereof and substituting the following: — There shall be a board of appeal on motor vehicle liability policies and bonds serving in the division of insurance and consisting of the members of the motor vehicle insurance rating and control board.

SECTION 4. Section one hundred thirteen B of chapter one hundred seventy-five of the General Laws, as amended by chapter one hundred sixty-six of the acts of nineteen hundred and twenty-nine, is further amended by adding at the end thereof (or otherwise inserting in substance) the following sentence: — The rates fixed and established under this section shall be maximum rates which shall be used unless the board authorizes other classifications and reduced rates filed with and approved by it for cause shown, and the board is hereby empowered to authorize such other classifications and reduced rates, whether for fleet rating, blanket policies, deductible policies or otherwise, on application by any insurance company or companies.

NOTE. — In addition to the foregoing sections, the following statutes should be amended by substituting or inserting the references to the "board" wherever needed:

General Laws, chapter 90, section 34B and section 34H, inserted by St. 1928, chapter 381, section 4; General Laws, chapter 175,

section 113A, as amended by St. 1928, chapter 381, section 5; section 113B, as amended by St. 1929, chapter 166; section 113C inserted by St. 1929, chapter 346, section 4; and section 113D, as amended by St. 1928, chapter 381, section 7.

An appropriate section should also be added specifying the date when the various parts of the act should take effect.

SELECTION OF RISKS.

As we have already pointed out, one of the weaknesses of our present law is the fact that insurance companies are unable to select the risks as they do under a system of voluntary insurance, except in cases where the unsafe character of the risk is capable of clear proof to the satisfaction of the Appeal Board. The taking of unsafe risks may be one of the reasons for the recent failure of several mutual companies. The selection of risks is a sound business practice in insurance, and we believe it should be provided for as much as practicable under our law in the interest of the careful car owners whose rates are affected by the taking of unsafe risks. We believe that under our proposed plan of competitive minimum rates by fleet and demerit rating and otherwise, to be approved by the Commissioner (or the rating and control board) within the fixed maximum rates, a certain amount of selection of risks will be possible, and this may reduce losses and consequently rates, and also check unsafe driving on the roads.

REQUIRED INSPECTION OF MECHANICAL EQUIPMENT.

In his inaugural address in January, 1929, His Excellency the Governor said, "It might be advisable to require by statute that every automobile . . . be submitted at regular intervals to an inspection by competent persons to establish whether its safety devices are in proper condition. . . . If we can obtain better control of the automobile from its mechanical standpoint, I feel that one of our major problems will be substantially reduced."

The Commission feels very strongly that we have allowed, if not invited, vehicles to be insured, registered

and operated without the ordinary mechanical equipment required for safe operation. New cars, of course, are generally in good condition, but this is not true of many used cars. We believe there are many unsafe cars on the highways.

It will be argued that cars will be kept off the road and citizens inconvenienced by a careful inspection of the vehicle before any insurance company can issue a certificate of insurance or a bond or other evidence of financial responsibility. But we think the inconvenience can be reduced to a minimum by a little planning, and we believe that every reasonable precaution against the outstanding sore spots in the breeding of accidents is justified.

We think it probable that highway inspection campaigns bring to light only a small number of the improperly equipped cars. Those good citizens who always display a willingness to be inconvenienced in the interest of public safety voluntarily present their vehicles for examination, and are seldom irritated by equipment inspection campaigns. Those who know, or have reason to believe, their vehicles would not pass the tests are likely to keep the vehicles off the public ways, or use them only in areas in which the campaigns are not being waged.

We recommend that no person shall be entitled to insure a car without a proper certificate as to the mechanical condition of the ordinary safety devices required on every vehicle. We need a proper method, self-enforcing and inexpensive, of determining whether or not a vehicle is properly equipped with those devices. The Registry of Motor Vehicles has a well organized department through which it appoints garages and service stations throughout the Commonwealth as "official stations" authorized to inspect and issue certificates as to condition of brakes, lights, steering mechanism, horns, windshield wipers and other safety devices. There appears to be no need of creating any new department or machinery for the enforcement of this initial inspection as authorized by St. 1929, chapter 252.

Insurance companies, through their agents, should have authority to call for additional certificates of mechanical condition at such times and on such conditions as may be provided by rules made by the Commissioner of Insurance (or the rating and control board).

The burden of such inspection would be distributed upon the risk, and the burden of keeping the records would be distributed among a large number of agents, thereby eliminating any necessity of creating new enforcement machinery or the employment of additional clerical force by the Commonwealth. Failure to comply with such rules and regulations should be sufficient ground for cancellation of the insurance.

The Registrar of Motor Vehicles has filed a bill (House, No. 63 of 1930) for authority to regulate the charges made by "official stations" authorized by his department to inspect and issue certificates of condition. We recommend that some such law be enacted. We believe it would be a sufficient guarantee against overcharging when certificates are demanded by the carriers of any given risk.

To carry out our recommendation of safety inspection we submit the following:

DRAFT ACT FOR REQUIRED INSPECTIONS.

SECTION 1. No person shall be entitled to procure liability insurance, bond or furnish other evidence of financial responsibility for the purpose of registering a motor vehicle to be used on the ways of the commonwealth until such vehicle shall first be inspected and a certificate of condition issued by an official service station appointed and duly authorized by the registrar of motor vehicles to issue certificates of condition of motor vehicle mechanism such as brakes and braking equipment, headlights, tail lights, signaling devices and steering apparatus. Such certificate shall be filed with the insurance agent or company, and may be accepted as prima facie evidence of reasonable compliance with the provisions of all laws requiring adequate braking, lighting and safety equipment. Failure to show the safety equipment to be reasonably within the requirements of the motor vehicle laws shall be a sufficient ground for a refusal by the company to accept the risk. Every application for registration shall show that the insurance or bonding company has received and has on file a proper certificate of condition for the vehicle for which registration is applied, and without such statement the registration shall be unlawful.

SECTION 2. Additional inspection and new certificates of condition may be required by the company or its agent, at such times and upon such conditions as may be provided by rules and regulations promulgated by the rating and control board (or commissioner), and failure to procure and file a new certificate of condition with company or its agent within fifteen days after demand is made by registered mail shall be a sufficient ground for cancellation of all insurance or bonds.

Whenever cancellation of insurance or bond has been made for failure to show proper condition of safety equipment, the risk shall not be insurable again for one year except under one of the demerit classifications as determined by the rating and control board.

REGISTRAR SHOULD HAVE ADDITIONAL INSPECTORS AND INVESTIGATORS.

In the administration of all laws it is desirable that the facts be ascertained as fully and as speedily as possible. At the present time the Registrar, through his inspectors and investigators, investigates all accidents in which death results or is likely to result, but with respect to non-fatal accidents he investigates only as many as can be attended to by his present force of men. In practice, because of a shortage of men for this purpose, a very small percentage of non-fatal accidents is investigated. We believe it is highly desirable that there should be more general investigation of non-fatal accidents for the purpose of enabling the Registrar to discipline careless operators, and recommend that the Registrar be given authority to appoint such additional number of inspectors as he needs for this purpose.

PROTECTION AGAINST INSOLVENT INSURANCE COMPANIES.

About 60,000 car owners have lost their insurance protection and have been obliged to take out new insurance in other companies in order to operate their cars because of the failure of three mutual companies during the last year or two since the present law went into effect. This is a serious situation which ought to be guarded against.

From our conferences with the Commissioner we find that the difficulty arises from lack of power in his office to guard against it. The present law requires that he should be able to prove the existence of insolvency, or some other cause which may be difficult to prove, before he can apply to the court to stop the business of the company. This involves an extended examination of the company's finances, pending claims and the necessary reserves required to meet them. It may take six weeks or so under present conditions to complete such examination, and the condition of the company may change for the worse meantime. It is perhaps the most serious responsibility that has been placed upon the Commissioner. In his report, House No. 24 of 1930, he has recommended that he be given broader powers to act under circumstances which shall be more easily ascertainable, and he has drafted a bill to carry out his recommendations, numbered House No. 32 of 1930.

While we have not had time to examine carefully the bill submitted by the Commissioner, we consider it essential that the Division of Insurance should be placed in a better position to meet the responsibility of safeguarding the public in this respect, and that the bill which has been submitted should receive the serious consideration of the Legislature.

THE REGISTRY OF MOTOR VEHICLES SHOULD NOT BE USED AS A COLLECTION AGENCY FOR UNPAID PREMIUMS.

There is a widespread practice by which car owners cover their insurance premiums from finance corporations, and these finance corporations, upon advancing the insurance premium, take from the insured an irrevocable power of attorney to cancel the insurance. Thus the power of cancellation which exists in the insured is transferred to the finance corporation as security for the credit extended to the insured, and the finance corporation takes from him with the power of attorney premium

notes or agreements to pay the amount of premiums in three to twelve monthly installments. If he does not pay these premiums the finance corporation then cancels the policy in his name under the power of attorney. The insurance company cannot refuse to cancel it, and, as provided in the law, the Registrar of Motor Vehicles is required to revoke the registration of the car. Subsequently, if the owner pays up, the policy is reinstated and the vehicle is re-registered, but if he does not pay up the policy is permanently cancelled and the registration is permanently revoked. During the year 1928 the Registrar was obliged to suspend 34,000 registrations for non-payment of premiums. Of these, 17,000 were finally revoked, and of the 17,000 cars thus put off the road approximately 5,000 sets of number plates were never returned.

In order to do all this bookkeeping of cancellation, etc., fifteen or more clerks are required in the Registrar's office. This means that the state by its present law is running an expensive collection agency for the benefit of the finance corporations, who are able to shift all this expense to the state, together with the danger of irresponsible car owners on the road, instead of being required to carry their own credits as other business concerns do. In our opinion this sytem should be stopped at once, and no insurance policy should be cancelled by or in the name of the owner of a car without the return of the number plates to the Registrar's office, and no such cancellation should be effective until the Registrar certifies to such return.

DEMERIT RATING.

The Commission is impressed with the arguments in favor of the Connecticut plan of imposing a rating penalty for various degrees of responsibility of operators involved in accidents. The plan seems to offer a very practical inducement for care in the operation of all vehicles. Once a car owner has been classified in one of the three classes, only a clear record can win a removal of the de-

merit, while additional accidents occurring while the car owner remains classified brings upon him immediately an additional penalty in the form of increased premium charges and the further penalty of being required to work back to normal rate one year at a time, thereby extending the penalty, in some cases, over a period of three years.

Under that plan a car owner is considered a normal risk until he commits certain offences or is involved in an accident. The car owner then becomes classified according to the seriousness of the accident, as Class A, Class B or Class C.

For Class A the premium on insurance is 10 per cent increase over the manual rate.

For Class B the rate is 25 per cent increase, and

For Class C the rate is 50 per cent increase.

A risk classified as C must operate for twelve months without any further record before the classification can be changed, and the classification can be changed only to the next lower class (B), after which the risk must go one year to earn reclassification and be eligible for the next lower class (A), and operate still another year in Class A before the risk can be taken as normal. Such penalties seem to the Commission to offer a practical deterrent to taking chances. After a risk reaches Class C — the highest penalty rate — any subsequent demerits while in that class would force the risk off the road.

The Commission has heard many ardent supporters of a plan to include property damage in our Liability Security Law, and elsewhere in this report we have discussed this subject. The A, B, C classification for demerit rating offers an opportunity to deal with property damage from the point of view of accident prevention. Every motor vehicle accident in which there is property damage is recognized as a potential fatality or personal injury, and therefore bears a direct relation to our motor vehicle liability security law.

Accordingly, we recommend that the Rating and Control Board should prescribe by rules and regulations, which should be published, the offences and other causes

for which an operator or owner becomes subject to demerit classification, and shall have authority to include damage caused to property as one ground of demerit classification.

The Registrar of Motor Vehicles should administer these rules and regulations, and any person aggrieved by reason of having been placed in one of the three classes may appeal from the order of the Registrar and have his classification reviewed by the Board, who shall have authority to change the classification to a higher or lower class, or remove the classification altogether.

We submit the following draft, based on the Connecticut act (Public Acts of Connecticut, 1929, c. 300):

DRAFT ACT AS TO DEMERIT RATING.

SECTION 1. The commissioner of insurance (or the rating and control board) shall prepare and publish rules and regulations in accordance with which the registrar of motor vehicles shall classify car owners who have committed such offences or have been responsible for such accidents or have otherwise conducted themselves in such a way as to call for classification for the purposes of demerit rating. The registrar shall accept no certificate of insurance nor any surety company bond unless such certificate or bond shall show in such manner as said rules provide that the premiums for the insurance certified or for such bond have been charged and paid as follows: for class A the fixed maximum or approved minimum rate plus ten per cent; for class B the fixed maximum or approved minimum rate plus twenty-five per cent; for class C the fixed maximum or approved minimum rate plus fifty per cent.

Any insurance or surety company or any agent thereof who shall wilfully certify that there has been charged or paid a premium other than that actually charged and paid shall be fined not less than dollars nor more than dollars.

SECTION 2. The rules and regulations above called for shall also specify the conditions and procedure under which any person classified in any one of the three classes mentioned may, after the expiration of twelve months from such classification, without further fault apply for reclassification in the next less serious class, or for elimination of his classification if he has been placed in class A. Such rules shall also provide for reclassification by the registrar of any classified person who shall commit an additional offence or be responsible for such other accident in addition to the one which caused the original classification. Any person aggrieved by any classification of the registrar may apply for reclassification or elimination of classification to the appeal board in the division of insurance.

DEDUCTIBLE POLICIES.

There is some merit to the proposal to authorize a form of policy or bond in which the owner would be an insurer to a limited extent of, say, $50. There seem to be two outstanding advantages in this form of policy:

1. The owner having the first responsibility to the extent of the deductible amount should find this a great stimulus to careful operating, and would take some interest in collecting the evidence after an accident instead of leaving the insurance company in the lurch.

2. The saving of premium charges would, in the case of fleet owners, offer substantial relief. To the individual owner the saving would, in many cases, induce the owner to become an insurer, and a more careful operator.

Objections.

The most outstanding objections to the deductible policy seem to be the difficulties in drawing the line in a division of authority, fixing liability, obtaining releases, etc. Should the insurance company stand the expense of investigation and claim settlement when the actual final settlement is less than the deductible amount? In cases that go to court and judgment is for the defendant, who will pay the legal cost? Where the assured believes he was not at fault, and company investigation seems to indicate that it is more economical to settle than to go to court, the assured may object to settlement and insist that the company try the case because the liability of the assured is limited to the deductible amount.

It is argued that where the assured objects to settlement and the company pays the claim, the company might be obliged to sue the assured for the deductible part of the amount so paid.

It is further argued that a claimant with shrewd counsel seeking damage of, say, $200, when the policy carried a deductible amount of $50, would sue for $250, and the company might be forced to pay as much as both the company and the assured would be expected to pay; that the

assured might never pay the company the $50 deductible judgment, or, if he did pay, the claimant would still have received $50 more than was necessary to settle the claim.

It is also pointed out that the responsible assured would probably purchase full coverage, while the irresponsible owner would seek the deductible coverage, and the companies might be the loser in final settlements of all claims arising out of the deductible insurance.

Answers to Objections.

Many of the foregoing objections will be answered if the insurance company writing the deductible policy is authorized to provide full service, including complete claim service for every claim incurred by the assured, regardless of whether or not the claim might result in a loss greater than the deductible amount. The carrying company would be obliged to pay the claim in full, and then be reimbursed by the assured to the extent of the deductible portion.

In case an assured elected a deductible form of policy and the carrying company chose to accept it, and subsequently a loss occurred and the company was unable to collect from its assured the amount of the deductible, or such portion as was due the company in any case where final settlement was for less than the deductible amount, the company might have the right to demand that the assured be classified under the "Demerit Rating," thereby causing his liability rate to be increased over the maximum normal rate. It would then require a period of unblemished operating to again earn the normal rating, unless the company were reimbursed for the deductible amount which it has caused to be paid on behalf of the assured. It is quite apparent that the companies must have full control over the claim costs or they could not be kept near the level used in computing rates. Therefore they should have the full expense allowance in the deductible rate just as in the full coverage rate.

Deductible insurance would be optional with the applicant for insurance as well as with the company applied to. If deductible insurance could be sold to "fleet owners," and the fleet owner could be induced to require the driver to pay the deductible amount in cases where the driver is held to be the party liable to the extent that the companies must settle the claim, certainly it would go far toward reducing the number of truck and taxicab accidents, thereby reducing their insurance premium total.

It could not be a condition of deductible insurance that the assured must assent to the settlement on the part of the carrying company. Competition between companies would forbid radical settlements, and competition would see to it that companies guarded most jealously the liability of their assureds.

The argument that the assured may object to settlement and demand that the company stand suit on the claim, because the liability of the assured is limited, can be guarded against by the assured voluntarily surrendering this right when he elects deductible insurance.

The fear that claims would be padded to the extent that companies might be paying, exclusive of deductible amounts, as much as the claim could otherwise be settled for, thereby giving to the claimant extra compensation to the extent of the deductible amount, seems to us rather far-fetched. There is little doubt that such practice might be resorted to in some instances, if counsel for the plaintiff learned that the coverage was the deductible form, but the commission is of the opinion that insurance companies will be able to meet this situation without difficulty.

Very little information is available on which to predicate the possible savings in rates under deductible policies. One of the oldest and strongest of the companies now doing business in the state has been good enough to volunteer a table of possible savings in deductible liability rates. It is only one company's analysis, and should be considered only as a possible basis on which to weigh the value of permitting this form of coverage.

Amount of Deductible Coverage.	Indicated Reduction in Public Liability Rates (Per Cent).
$50	8
100	12
150	16
200	19

The above table is based upon the assumption that the companies will assume all costs of investigation and claim service, court defence and every expense incidental to settlement, and be reimbursed by the assured to the extent of the deductible amount only.

The Commission is of the opinion that the Legislature should make it possible for the Insurance Commissioner, or the "Rating and Control Board," if created, to authorize the issuance of deductible insurance, *if companies desire to write it and the motor vehicle owners desire to purchase it.*

We would not favor, at this time, making deductible insurance a penalty for undesirable risks which the companies might otherwise refuse. It is conceivable, however, that it might be worked out in conjunction with "Demerit Rating" so as to provide a reasonable measure of safety in what is now an undesirable risk.

NON-RESIDENT CARS.

The present law provides no requirement of insurance by a non-resident owner until after the thirty-day reciprocal privilege has expired. He must then secure registration in Massachusetts and he becomes subject to the same insurance requirement as our own citizens. Very often this makes necessary the cancellation of a standard form policy of liability insurance written in another state, but affording adequate protection, and the purchase of the same, or virtually the same, coverage written on a special form required by Massachusetts.

It does not seem to us that we should subject our

visitors to either the inconvenience or the expense of this procedure. We are unable to see any objection to Massachusetts recognizing any policy providing coverage required by our law, although it be written outside of Massachusetts, so long as the policy provides the protection sought for our citizens and is written in a company authorized to do business in Massachusetts.

We therefore recommend that Massachusetts authorities be authorized to recognize a certificate of insurance written outside of Massachusetts in companies authorized to write liability insurance in Massachusetts, if said policy provides standard form coverage in limits required by Massachusetts and if accompanied by a certificate of condition filed with the Registrar of Motor Vehicles after inspection by an official Massachusetts service station.

The special advantage of this would be that a visitor preparing to spend some time in Massachusetts could apply to his local insurance agent for the necessary certificate to meet the Massachusetts requirement. The visitor could then present this to the Registrar of Motor Vehicles and secure an official non-resident insurance identification card for his vehicle without inconvenience or monetary loss by cancellation and reinsuring. With evidence of insurance on file with the Registrar there would be no need of issuing Massachusetts number plates, as the number plate of the other state would be sufficient for identification. It might be advisable, however, for the Registrar to issue a small non-resident insurance plate which could be attached to the car. As our laws now provide that suit may be brought against a non-resident by service upon the Registrar of Motor Vehicles, so that judgment may be obtained against a non-resident even though he is not present, it seems to us that this plan of securing the evidence of insurance in the Registrar's office will afford more protection to Massachusetts citizens injured by non-residents than any other law, and it will also be very much fairer, as well as more convenient, for tourists and summer residents whose

presence is so much desired by persons who deal with them all over the Commonwealth.

The Judicial Council in its fourth report suggested a plan (which is another recommendation referred to us for consideration) based on the New Hampshire system, to take care of non-resident cases. Under that plan a person injured would have a right to apply to the district court for an order that the owner of the non-resident car should furnish evidence of financial responsibility, and if he did not, that he, as an operator, and the car and every other car owned or operated by or for him should be excluded from the Commonwealth.

It seems to us, however, that the plan which we have suggested is a much more effective method of dealing with non-residents, as it will accomplish the double object of being convenient for them, and at the same time securing the greatest practicable amount of insurance protection for persons injured by them, and such combined results are very desirable in a state in which summer residents and tourists from other states are so numerous as in Massachusetts.

We cannot urge too strongly the adoption of this recommendation, especially as the recent decision in the case of Hanson *v.* Culton (1929 Mass. Adv. Shs. 2335–2337) shows that under the present law a non-resident car owner may find himself in a serious position in Massachusetts from which he should be given some reasonable relief.

PUBLICLY OWNED CARS.

The Commonwealth, by the passage of the present insurance law requiring its citizens to insure their cars in order to protect those who may be injured by them, has placed itself in a position which might be considered almost humorous if it were not so serious. There is a general rule of law that neither the Commonwealth nor its subdivisions — the counties, cities or towns — are ordinarily liable for the negligence of their agents. Accordingly, there is no protection whatever for a person injured by a publicly owned car except an action of

negligence against the driver, who may be an impecunious public employee.[1]

Now, a person injured by a car of the fire department, or of the police department, or any other department of public service, is just as much injured as if he had been hit by a privately owned car, so that he is just as much within the purpose of the present insurance law as any of those persons for whose benefit that law was enacted. There being no public liability upon the Commonwealth or its subdivisions because of the ownership of their cars and their negligent operation by their agents, there appears to be no insurable interest, but as the agent may be personally liable for his negligence he has an insurable interest. There appears to be no law at present authorizing the Commonwealth or the various municipalities to appropriate money for liability insurance, and the only way in which publicly operated cars or school busses can be made safe for the public is by requiring the drivers or contractors to provide insurance, and then have them figure the cost of the insurance into the amount which they are to receive from the municipality under their contract of service. But this is an indirect method which is not generally applicable in such a way as to secure sufficient protection for injured persons against publicly owned cars throughout the Commonwealth.

We see no reason why the Commonwealth should not swallow its own medicine and provide protection for persons injured by public automobiles instead of being the first one to violate the policy which it has adopted. We believe that the statutory requirement of insurance of private cars furnishes a special statutory reason for differentiating this motor vehicle situation from other forms of public liability for the acts of agents. There being, as already pointed out, no existing insurable interest in the public, we suggest that the simplest method of reaching the desired result is to amend the law of public finance in such a way as to allow the Commonwealth and its

[1] As to this subject see Hafford v. New Bedford, 16 Gray, 297; Haley v. Boston, 191 Mass. 291; Johnson v. Somerville, 195 Mass. 370; Bolster v. Lawrence, 225 Mass. 387; Murdock Parlor Grate Co. v. Com., 152 Mass. 28; Glickman v. Com., 244 Mass. 148.

subdivisions to appropriate money to cover the liability of its motor vehicle operators for injury caused by their negligence, and to require registration of all publicly owned cars, the registration to be conditioned upon a certificate that the political subdivision has sufficiently covered its drivers' liability by insurance. If this plan were adopted, and if our other recommendation to allow insurance companies to adopt competitive minimum rates were applied to this form of public insurance, the Commonwealth and its various municipalities could doubtless secure policies of group drivers' insurance at reasonable rates which would furnish reasonable protection to the public from the "instruments of death" that the Commonwealth and its various subdivisions are now operating on the highways, often without regard to the safety of its citizens. This would not involve any contingent liability of the cities and towns over the required insurance amounts because there would be no more liability on them than there is now and they could include the premium charge as a known and fixed item in their budgets.

Our greatest regret is that the jurisdiction of the Commonwealth is not broad enough to extend this requirement to the United States in order to provide some protection against its mail wagons, which in the opinion of many observers are among the most dangerous vehicles on the highways.

CHARITABLE CORPORATIONS.

The rule in Massachusetts, established in the case of Foley *v.* Wesson Memorial Hospital, 246 Mass. 363, is that charitable corporations are not responsible for accidents due to the negligence of their servants or agents in the operation of motor vehicles.

Nevertheless, such corporations are not excluded from the operation of the insurance act, and are apparently as much required to insure their motor vehicles as any one else. (See G.L., c. 90, § 1A; St. 1926, c. 368, §1.)

The policy insures the protection of "any person re-

sponsible for the operation of the insured's motor vehicle or trailer with his express or implied consent," and so covers operation by the agents and servants of such corporations individually, but does not cover the corporation itself, for that is exempt from liability so that there is nothing to cover.

There is no reason for changing the law which exempts charitable corporations from liability, but there is also no reason why the just claim of the injured against the driver should be defeated merely because of ignorance of law or fact, or inability to identify, locate and name the operator in the writ.

We recommend an act in substance as follows:

SUBSTANCE OF AN ACT AS TO PUBLICLY OWNED CARS AND THE CARS OF CHARITABLE CORPORATIONS.

SECTION 1. An action may be begun against the commonwealth, or any county, city, town or other subdivision of the commonwealth, or a charitable corporation owning a motor vehicle, for damages for bodily injuries or death caused by the operation, etc., of such motor vehicle, but the defendant thus named in the writ if not liable for the negligence of its servants or agents shall suggest its exemption from such liability and withdraw from the suit by filing a suggestion of insurance and specifying the name and address of the driver of such vehicle and the name and address of the insuring company; thereupon, the name of such driver shall be substituted as defendant in the action, and the plaintiff shall summon the said driver and said insurance company, by registered mail with returned receipt requested, to appear and defend, and the action shall proceed as if originally begun against such driver.

SECTION 2. The foregoing procedure shall also apply by leave of court for cause shown by any defendant in an action whose car was driven with his consent but by a person not his agent.

SECTION 3. (This section should contain an amendment of the laws of public finance to allow appropriations for driver insurance or "fleet" insurance to cover drivers of publicly owned cars, as above suggested.)

"EXTRA-TERRITORIAL COVERAGE."

The present law requires a car owner as a condition of registration to take out insurance against liability for personal injury on the "ways" of the Commonwealth.

This means the public highways of Massachusetts. If a person is injured by a Massachusetts car on a private way, or on private land adjoining a public highway, the required insurance does not cover such injury. The car owner, in order to obtain such protection and to provide the protection of insurance for the injured person, must carry what is known as "extra-territorial coverage." The "coverage" is of two kinds: first, against accidents on private ways; second, against accidents outside of the Commonwealth. The present rate for this coverage is $3 in addition to the required coverage on public ways.

It is noticeable that the proposed state fund bills do not include insurance against accidents on private ways or in other states. All car owners who wish to protect themselves from such liability would have to carry extra insurance in addition to the required insurance in the state fund. They could only get such "extra-territorial coverage" from private insurance companies, so that we would have the same man insured by the state and the private insurance companies, with all the complications which might result from that situation. As 98 per cent of the car owners of Massachusetts apparently now want and get this additional coverage at a cost at present of about $3, it is safe to say that they would want it in addition to the state fund insurance, but they would have to go to private companies for it. If private companies were excluded from the field of insurance on public highways, they would be forced as a business matter to raise rates on "extra-territorial coverage" if they were to do it at all. They certainly could not undertake this limited amount of insurance for a $3 premium.

Returning to this aspect of the problem as presented by the present insurance law, while the state cannot reasonably require insurance against accidents in other states or in Canada as a condition for registering a car for use in Massachusetts, there seems to be no sufficient reason why it may not require insurance against accidents off the public highways in Massachusetts by

amending section 34A, as amended by St. 1928, c. 381, § 3, to cover accidents "upon the ways of the commonwealth or places in the commonwealth to which the public has a right or a privilege of access by invitation or otherwise." This would afford more complete protection to injured persons than is provided by the present law. It would avoid those cases where a car owner who has taken the required insurance, but has not understood that he also needs "extra-territorial insurance," may find himself, in case of an accident on an unaccepted street or other private way, without any insurance.

As to the question of legislative power to require such insurance on private ways, in the language of the justices of the Supreme Judicial Court in the advisory opinion in 251 Mass. 569, at p. 599, also printed as House Document No. 1342 of 1925.

> Such extension of liability stands on the same footing as the statute making the owner of a dog liable to a person injured by it in double the amount of damages sustained even though the dog is in the possession and keeping of another person not the agent, servant or representative of the owner. The validity of that statute has never been doubted. G. L., c. 140, § 155. Galvin *v.* Parker, 154 Mass. 346.
>
> The proposed extension of liability and the requirement for security by the owner of a motor vehicle for compensation of personal injuries caused by it do not differ in principle from the civil liability act affording remedy to those injured by an intoxicated person against the person who caused such intoxication in whole or in part by sale or gift of intoxicating liquor, which has been on our statute books in some form since the enactment of St. 1855, c. 215, § 22.

The extension of liability in these cases was not confined to public ways. The dog and the intoxicated person in each case were considered as dangerous, and the liability created was for injuries regardless of the place where they occurred. On the same reasoning, there seems to be no doubt of the legislative power to require insurance regardless of the place where the accident occurs, as long as it involves a car which is used upon the public highway and a way opening out of such a highway

which persons using the highway are privileged or invited to use. This extension of the required liability should properly be considered in the rates.

SUSPENSION OF INSURANCE AND REGISTRATION WITHOUT CANCELLATION OF REGISTRATION.

There are many vehicle owners who register cars and at some period during the registration year have occasion to store their cars. It may be due to illness, winter weather, a vacation trip or one of several things. Under the operation of the present law there is no opportunity to obtain "temporary suspension" of insurance. The policy must be cancelled and reissued at the time the vehicle is again placed into service. A cancellation of a policy for a period of three months with its subsequent reinstatement is, in the average case, more expensive than if insurance had been kept in full force and effect.

The Commission believes this is unjust. It believes that an owner should have an opportunity to place his car in dead storage, obtain a temporary suspension of insurance coverage, and deposit the registration certificate and number plates with any branch registry or with the main office of the Registry of Motor Vehicles, and thereby save the pro rata premium charge for the time the car is not a hazard upon the ways of the Commonwealth.

We recommend that the Division of Insurance, through its Commissioner, or the rating and control board, if one is created, be authorized to provide a form of suspension endorsement with pro rata abatement of premium to take care of cases where a car is temporarily removed from the ways of the Commonwealth. Said authorities should be authorized to establish a fee to be paid to the insurance agents for such an endorsement.

We recommend, further, that the Registry of Motor Vehicles be authorized to make a charge of 50 cents for temporary storage and custody of the number plates, and that the same number plates be returned to the depositor upon reinstatement of the insurance. We believe this is a safe plan for the convenience of the public.

RATE-MAKING UNDER THE MASSACHUSETTS MOTOR VEHICLE LIABILITY INSURANCE LAW.

The history and operation of the "Massachusetts Automobile Rating and Accident Prevention Bureau," called, for the sake of brevity, the Automobile Bureau, is given in detail in Appendix A of this report, pages 182–230. The general and page references in the following account are to that Appendix.

Rate-Making Bureaus.

Rate-making bureaus came into existence in this country because of the limited experience of any one company writing liability insurance. All the companies writing any particular form of liability insurance, such as workmen's compensation or motor vehicle liability insurance, organize a rating bureau for the purpose of collecting the combined experience of all the underwriting companies (page 183). This combined experience, when carefully collected, properly tabulated and classified by the bureau, produces a sufficient volume of experience over a number of years to obtain an average upon which insurance rates can be fixed with almost mathematical precision.

Such a statistical bureau, but without rate-making powers, is the Massachusetts Automobile Bureau, which was organized under the direction of the former Insurance Commissioner, Mr. Monk, in November, 1926 (page 195).

Massachusetts Automobile Bureau.

The Insurance Commissioner has adequate control and supervision of the work of the Automobile Bureau under the provisions of its constitution and through the supervisory work of an actuary of the Insurance Department, who oversees the collection, classification and analysis of all the experience data, facts and figures filed with the Automobile Bureau by the companies writing this

motor vehicle liability insurance (pages 208, 209). An examination of the operations of this Bureau by this Commission has convinced it that the work is being honestly, carefully and scientifically done, and, owing to the fact that the Insurance Commissioner has adequate control and supervision of its work, no public benefit would be accomplished if the work of this Bureau were taken over by the state or its Insurance Department. No evidence was presented to this Commission which would indicate that the Insurance Department or the state could do the work of the Automobile Bureau better or more cheaply than it is now being done by the Bureau itself.

Automobile Bureau not a Rate-Making Body.

There are some rating bureaus which are rate-making bodies in fact, and in such cases the Insurance Commissioner only *approves* the rates and does not "fix and establish" them as he does under the Massachusetts Motor Vehicle Liability Insurance Law. But even here in Massachusetts, under the Workmen's Compensation Insurance Law, where the Insurance Commissioner *approves* the rates, former Insurance Commissioner Hardison did not consider the work of the Massachusetts Rating and Inspection Bureau, organized under his direction in 1915 to operate under that law, as in any sense rate making (page 190). He considered that Bureau as a service organization which ascertained and made available the material for rate making (page 189).

This Commission is of the opinion that the Automobile Bureau is in no proper sense a rate-making body. It collects, classifies, tabulates and analyzes the combined experience data of the insurance companies, and submits these data with its recommendations to the Insurance Commissioner, who is by statute charged with the sole duty to fix and establish fair and reasonable classifications of risks, and adequate, just, reasonable and non-discriminatory premium charges, or rates. But, in order to remove from the mind of the public any

suspicion that the Automobile Bureau is a rate-making body, or that the insurance companies represented in its membership are actually making the automobile insurance rates, the Commission recommends that the name of this Bureau be amended by striking out the word "Rating" and inserting in place thereof the word "Statistical," so that the name shall read: "Massachusetts Automobile Statistical and Accident Prevention Bureau."

Data submitted by Automobile Bureau to the Insurance Commissioner.

After the collection of the experience data from the insurance companies (pages 204–207) the Automobile Bureau first mathematically ascertains and tabulates from this combined data the basic so-called "pure premiums" or loss cost per type of car for each city and town in the state in which the cars incurring the losses are principally garaged (pages 208–227).

The first step in the making of rates is to find this basic "pure premium" or the average sums necessary to pay the losses incurred. The next step is for the Automobile Bureau to analyze the combined experience data as to the various types of cars and as to the town or territory risks of like hazards. The tabulated data as to "pure premiums" or loss cost and the analysis of the classifications of types of cars and of territories are submitted by the Automobile Bureau to the Insurance Commissioner with a brief containing the Bureau's recommendations and reasons therefor, for the consideration of the Insurance Commissioner in helping him to fix classifications of risks and premium charges.

A rate to be adequate must include not only the cost of claims, but also the expenses of the insurance companies in conducting their business. It is necessary, therefore, to add to the "pure premiums" a sum which shall be adequate to cover all expenses and allow a reasonable profit. *This sum is, in insurance language, called the "expense loading," and is not compiled by the Automobile Bureau.*

Once a year each insurance company files with the Insurance Commissioner a statement showing its earned premiums for the preceding year and an itemized list of its expenses (pages 227–230). These combined statements are turned over by the Insurance Commissioner to the Automobile Bureau for analysis, and the latter recommends in its brief the percentages of earned premiums to be allocated to the various items that make up the expense "loading," including a reasonable profit.

(See table printed on opposite page.)

Duties of the Insurance Commissioner under the Law.

The Automobile Bureau, as already outlined, supplies the Insurance Commissioner each year with the tabulated experience data of previous years, together with its Brief, filed in behalf of its insurance company members, analyzing the data and making recommendations as to classifications of types of cars and territories and the percentage of premiums to be allowed for the expense loading and profit.

With these data and brief before him and such other data as he may collect, the Insurance Commissioner has the necessary material, on the basis of which he is required by General Laws, c. 175, § 113B, as amended by St. 1929, c. 166, after due hearing and investigation, to fix and establish fair and reasonable classifications of risks, and adequate, just, reasonable and non-discriminatory premium charges.

It has been the practice of the Insurance Commissioner first to determine the fairness and reasonableness of the classifications of risks by territories, and then the classifications of risks by types of cars within these territories. Next, he determines the percentage of premiums to be allowed, first, for each item of expense based on the figures of the stock insurance companies, and second, for a reasonable profit. Having determined the classifications of risks as to territories and types of cars, he deter-

EXPENSE FIGURES OR "LOADING", AS RECOMMENDED BY THE COMPANIES AND AS ALLOWED BY THE COMMISSIONER, 1927–1930.

	Percentage of Earned Premiums.		Amounts paid by Stock Insurance Companies in 1927.	Percentage of Earned Premiums of $11,070,754 in 1927.	Percentage of Earned Premiums asked for 1929.	Percentage of Earned Premiums determined by Insurance Commissioner before resigning, for 1929.	Percentage of Earned Premiums allowed by Acting Insurance Commissioner and in Effect for 1929.	Amounts paid by Stock Insurance Companies in 1928.	Percentage of Earned Premiums of $12,657,417 in 1928.	Percentage of Earned Premiums asked for 1930.	Percentage of Earned Premiums allowed for 1930.
	Recommended by the Bureau, 1927.	Allowed 1927 and 1928.									
1. Administration expense	7.9	8.7	$982,100	8.86	7.5	7.5	7.5	$1,028,653	8.1	7.5	7.5
2. Claim expense investigation and adjustment of claims.	9.5	10.4	1,132,841	10.22	9.96	9.0	9.0	1,418,972	11.2	11.2	10.0
3. Inspection expense bureau	1.1	1.1 (1.0)	102,949	1.14 (.92)	1.0	1.0	1.0	82,186	.85 (.64)	1.0	1.0
4. Bureau assessments	–	(.1)	23,986	(.22)				27,227	(.21)		
5. Field supervision expense	–	15.0	285,792	19.79 (2.57)	20.0	17.0 (2.0)	12.0 (2.0)	311,405	19.28 (2.5)	20.0	12.0 (2.0)
6. Acquisition expense, commissions and other acquisition costs.	–		1,906,610	(17.22)		(15.0)	(10.0)	2,124,566	(16.78)		(10.0)
7. Taxes, licenses and fees	2.5	2.5	284,219	2.61	2.5	2.5	2.5	324,754	2.57	2.57	2.5
8. Miscellaneous expenses	–	–	4,357	.04	–	–	–	5,823	.04	–	–
Profit	2.5	2.5	–	–	2.5	2.5	2.5	–	–	2.5	2.5
Total	23.5[1]	40.2	$4,722,854	42.66	43.46	39.5	34.5	$5,323,585	42.04	44.77	35.5
Expected loss ratio	–	59.8	–	–	56.54	60.5	65.5	–	–	55.23	64.5
	–	100.00	–	–	100.00	100.00	100.00	–	–	100.00	100.00

[1] Exclusive of acquisition expense.

mines the "pure premiums" or loss cost per car for these classifications, from the tabulations of the experience data, adds to it the necessary amount to cover expenses and allow a reasonable profit, and thereby establishes rates for these classifications of risks which must be "adequate, just, reasonable and non-discriminatory."

These words, "adequate, just, reasonable and non-discriminatory," have been interpreted by the Insurance Commissioners as follows:

"Adequate". The rates must be sufficient to produce enough revenue to the insurance companies to pay all of their incurred losses and expenses and allow them a reasonable profit.

"Just". The rates must be based on sound principles, as developed by custom and experience.

"Reasonable". The rates must not be more than "adequate".

"Non-discriminatory". The rates must be equitably adjusted and proportioned as between different classes of risks in accordance with the cost of the claims caused by them.

The Commission considers that these interpretations are sound.

Former Insurance Commissioner, Mr. Monk, in a statement made in 1928 in connection with the rates for 1929, said:

> Insurance is a plan whereby the losses sustained or caused by the few are borne by the entire class or group out of their joint contributions into a common fund. . . . Insurance rates are averages, and in order to secure a dependable average there must be a sufficient number of risks covered for a sufficient length of time. The larger and more varied the experience in respect to losses, the higher the probability of the accuracy of the average deduced therefrom.

Insurance rates or premium charges based on adequate experience, rather than on judgment or guesswork, is the end sought in the writing of any form of insurance.[1]

[1] See discussion of "Judgment" rates for 1927 by former Insurance Commissioner Monk, page 231.

When a sufficient volume of experience has been produced for a sufficient number of years, the insurance companies then attempt to classify the good and the bad risks as shown by the experience data, and adopt some form of rating which gives to the better risks the benefits of their group experience record in the form of lower premium charges, and to the bad risks the premium charges called for by their group experience data. The territorial classifications of risks in use under the Massachusetts Motor Vehicle Liability Insurance Law is thus a form of merit rating.

With reference to this territorial basis for rate making, former Commissioner Monk, in his statement of 1928, above referred to, said:

> It is fundamental that as a matter of justice the motor vehicles causing the greater proportion of claims should be chargeable with a higher rate.
>
> The making of rates on a territorial basis is grounded on these principles. The territorial rating plan is nothing new. It has been employed for many years throughout the country, and is a sound, equitable principle of liability insurance rating. The germ of the principle is that motor vehicles principally garaged in certain territories or districts caused a greater average loss cost to the insurance companies than those principally garaged in other places. This is established by the universal experience under this plan and by the statistics returned to me.

Determination of Territorial Classifications of Risks by the Insurance Commissioner.

A full description of the territorial classifications recommended and adopted for 1927–1930 is contained elsewhere in this report, as follows:

The major problems as to this territorial zoning or classification have centered in the seven communities, — Boston, Chelsea, Revere, Somerville, Cambridge, Everett and Winthrop, and these specific problems with respect to private passenger cars, with their solution by the Insurance Commissioner, will be briefly discussed here. For the other zoning problems reference is made to Appendix A.

For 1927 and 1928 these seven communities were grouped with eleven surrounding towns into one territory (page 211); for 1929 they were grouped by themselves (page 218); and for 1930, Chelsea, Revere and Boston were each put into a separate territory, and Cambridge, Everett, Somerville and Winthrop were grouped together into one territory (page 221).

The Automobile Bureau, in its Brief of August 15, 1928, called attention to the fact that these seven communities are all on the North Shore route (p. 213). Practically all the traffic leaving and entering Boston, to and from the North Shore, passes through them along one heavily congested boulevard. It also takes nearly an hour from Boston for traffic on this main artery to segregate into its component parts and diverge from this one congested street. The Brief then stated (page 213):

> With congestion come accidents, and since the residents of these towns are constantly exposed to this congestion it is to be expected that the seven towns on the North Shore route would show a higher loss cost than others.

With only one year's experience data available in 1928, there was not sufficient volume of experience to do otherwise than to group cities and towns into territories of like hazards (page 211).

This North Shore route was again referred to in the Automobile Bureau's Brief of August 15, 1929, in connection with the city of Lynn (page 223). It refers to the known congested traffic conditions on this route, and states that the great bulk of traffic going from Boston to Beverly, Salem, Manchester, etc., goes through the city

of Lynn, and that the congestion caused by this through traffic creates a hazard to which the Lynn cars are exposed. The result, as shown by the experience data of 1927 and 1928, was that loss cost per car produced by Lynn cars was higher than the average of the other cities and towns grouped with Lynn for rating purposes.

Reference was also made in this brief to the city of Lowell and seven towns closely contiguous thereto, and attention was called to the fact that most of these towns are on the main arteries of travel leading to New Hampshire, and are subject to the traffic congestion of these "through routes" (page 225).

For the year 1930 the Insurance Commissioner, Mr. Brown, fixed as fair and reasonable the territorial classification of Chelsea as Territory I, Revere as Territory II, Boston as Territory III, and Cambridge, Everett, Somerville and Winthrop as Territory IV (page 221). With the experience data of 1927 and 1928 before him, he found that there was sufficient volume of experience for each of these groups to obtain an average upon which he could fix premium charges.

Car Exposure.

Was the car exposure for the years 1927 and 1928 of sufficient volume in each of the four new territories to be entitled to full credibility?

For some time an exposure of 50,000 car years (page 219) was considered a sufficient volume of experience to be entitled to full credibility (page 219). Recent studies have indicated that claim frequency or number of claims per hundred cars should also be considered in order to produce a dependable average (page 219). A claim frequency of five claims per hundred cars would require 50,000 car years' exposure to produce full credibility. (See table following.)

Credibility Table showing Exposure necessary for 100 Per Cent Credibility at Various Claim Frequencies.

Claim Frequencies. (1)	Earned Car Years. (2)	Claim Frequencies. (1)	Earned Car Years. (2)	Claim Frequencies. (1)	Earned Car Years. (2)
1.0	260.500	11.0	21.300	21.0	9.900
1.5	172.800	11.5	20.250	21.5	9.600
2.0	128.950	12.0	19.300	22.0	9.350
2.5	102.600	12.5	18.400	22.5	9.050
3.0	85.100	13.0	17.600	23.0	8.800
3.5	72.550	13.5	16.850	23.5	8.600
4.0	63.150	14.0	16.150	24.0	8.350
4.5	55.800	14.5	15.500	24.5	8.100
5.0	50.000	15.0	14.900	25.0	7.900
5.5	45.200	15.5	14.350	25.5	7.700
6.0	41.250	16.0	13.800	26.0	7.500
6.5	37.850	16.5	13.300	26.5	7.300
7.0	34.950	17.0	12.850	27.0	7.100
7.5	32.450	17.5	12.400	27.5	6.950
8.0	30.250	18.0	12.000	28.0	6.750
8.5	28.300	18.5	11.600	28.5	6.600
9.0	26.600	19.0	11.200	29.0	6.450
9.5	25.100	19.5	10.850	29.5	6.300
10.0	23.700	20.0	10.500	30.0	6.100
10.5	22.400	20.5	10.200		

The experience data for 1927 and 1928 showed that the loss ratios for Chelsea and Revere had been very heavy. The loss ratio allowed by former Commissioner Monk for 1927 and 1928 was 59.8 per cent of the earned premiums, whereas the actual experience loss ratio for these two years combined indicated 162.2 per cent for Chelsea and 136.1 per cent for Revere.[1] In other words, incurred losses in Chelsea were 62.2 per cent greater than the premiums received, and in Revere, 36.1 per cent.

The insurance companies were undoubtedly losing money on the Chelsea and Revere policies.

[1] Synopsis of Insurance Rates, etc., page 68.

On the other hand, Chelsea, with the high claim frequency of 27.2 claims per 100 private passenger cars for 1927 and 1928 combined, would require about 7,000 car years' exposure, and Revere, with a claim frequency of 21.2, would require about 9,800 car years' exposure, in order to be entitled to full credibility. Chelsea, however, had a total of only 5,700 car years' exposure, and Revere, 5,500, for the years 1927 and 1928. This gave Chelsea about 81½ per cent credibility and Revere about 56 per cent.

Boston, with 118,735 car years and 15.1 claims per 100 cars, and Cambridge, Everett, Somerville and Winthrop combined, with 50,705 car years and 12.4 claims per 100 cars, were entitled to full credibility.[1] The loss ratios also for Boston, and for Cambridge, Everett, Somerville and Winthrop combined, for the years 1927 and 1928, were considerably higher than the 59.8 per cent allowed by the Insurance Commissioner. Boston's loss ratio was 96.9 per cent of the premiums, and Cambridge, Everett, Somerville and Winthrop combined had a loss ratio of 84.7 per cent of the premiums.

The basic "pure premiums" or loss cost for the seven communities combined for 1927 and 1928 was $33.03. A comparison with the new classification of four territories is as follows:

	1927 AND 1928.	
	Basic Pure Premiums.	Basic Pure Premiums for the 7 Communities combined.
Territory I. Chelsea	$54 93	
Territory II. Revere	46 00	
Territory III. Boston	33 25	
Territory IV:		
Cambridge		$33 03
Everett	28 64	
Somerville		
Winthrop		

[1] See Credibility Table above, page 48.

This new territorial classification increased Chelsea's pure premium or loss cost $21.90, Revere's, $12.97, and Boston's only 23 cents, whereas the four communities in Territory IV were decreased $4.39.

It made little difference to Boston whether it was put into a territory by itself or not, but it made a very substantial difference to the other six communities.

The car exposure and claim frequency for Boston and for Cambridge, Everett, Somerville and Winthrop combined were sufficient to produce 100 per cent credibility, but were only sufficient for Chelsea to produce 81½ per cent credibility, and for Revere, 56 per cent.

Whereas the Insurance Commissioner, Mr. Brown, considered that Chelsea and Revere had sufficient credibility experience to place each in a territory by itself, he did not adopt the recommendations of the Automobile Bureau as to the basic pure premiums or loss cost for these two cities. An analysis of the experience data for Chelsea showed that the loss cost had dropped from $58.45 in 1927 to $51.45 in 1928, and for Revere, from $50.77 to $40.99.

He considered that these two cities should have some credit for this improvement in their accident record, and adopted a pure premium or loss cost which was a mean between their indicated experience loss cost for 1927 and 1928 and the loss cost used as a basis for the 1929 rates.

Decision of Supreme Judicial Court on Territorial Classification.

After the rates had been fixed on September 15, 1929, for 1930 by the Insurance Commissioner, the cities of Revere, Boston and Chelsea brought suit against the Commissioner and raised the question:

> . . . whether a classification of motor vehicles for the purpose of fixing rates for the insurance premium charges according to the territory within which the motor vehicle is principally garaged can be lawful under the governing statute and controlling provisions of the State and Federal Constitutions.[1] (P. 117.)

[1] Advance Sheets, Opinions of the Supreme Judicial Court. Ephraim A. Breat and others *v.* Commissioner of Insurance, January 7, 1930, pp. 113–123.

The Insurance Commissioner demurred to these suits and the demurrer was sustained on January 7, 1930.[1]

The court in its opinion refers to the "Memorandum of Finding and Order" relative to the classifications of risks and schedule of premium charges for 1930 filed by the Commissioner, in which reference was made to the territorial basis of rates as follows (p. 115):[1]

> The plan is based on the fact that the risk or hazard assumed by the insurer varies with the place where the insured cars are principally garaged.

On page 119[1] the court quotes from a decision of the United States Supreme Court as follows:

> It was said in Gulf, Colorado & Santa Fé Railway *v.* Ellis, 165 U. S. 150, at 165, 166: "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground — some difference which bears a just and proper relation to the attempted classification — and is not a mere arbitrary selection."

On page 120[1] the court discusses the principal contention of the plaintiffs as follows:

> The principal contention of the plaintiffs is that the classifications of risks and premium charges based on territory where motor vehicles are garaged is inherently and necessarily unequal and discriminatory and can have no possible relation to the risks assumed by the insurer. It is urged that the risk of an insurer depends upon the skill and reliability of the operator of a motor vehicle and is wholly disassociated from the place where it may be kept. It may be conceded that there is an appearance of inequality if X is required to pay a higher premium charge, provided his motor vehicle is principally garaged in Chelsea or Revere or Boston, cities constituting respectively territories I, II and III, than he would be required to pay if it were principally garaged in Cambridge in territory IV, or in Brookline in territory V, or in Andover in territory VI; or if Y and Z, owning precisely the same kind of motor vehicle and possessing in every particular the same capacity, experience and skill in operating the motor vehicle, but the one keeping it in Chelsea in territory I and the other in Lancaster in territory VIII, are required to pay substantially different premium charges. Theory and logic seem to lend some support to the contentions of the plaintiffs.

[1] Advance Sheets, Opinions of the Supreme Judicial Court. Ephraim A. Brest and others *v.* Commissioner of Insurance, January 7, 1930, pp. 113–123.

The court found that (p. 122) [1] —

there was available a considerable body of information bearing upon accidents in which motor vehicles were involved as related to the places where they were principally garaged.

And that the Commissioner (p. 122) [1] —

thought that he had before him sufficiently reliable and extensive statistics tending to show that motor vehicles principally garaged in certain defined localities are less hazardous insurance risks than motor vehicles kept in other localities.

The court further said (p. 123): [1]

It may not be easy to state the reason why the risks of insurance of motor vehicles as required by the statutes should vary according to localities in which they are principally garaged, and be greater if garaged in one place and less if garaged in another. But the fact of such variation in risk must be assumed on these records. This being so, there appears to be no adequate reason for granting the prayers of the petitions.

House Bills Nos. 95, 96 and 466 of 1929 were specifically referred by the Legislature to this Commission. These three bills covered the same subject matter and proposed amendments in the Motor Vehicle Liability Insurance Law which would prohibit territorial classifications and bring about state-wide "flat" rates.

This Commission is in favor of territorial classifications of risks on the ground that it is a sound insurance practice which has developed gradually, based on years of study and experience data and is in effect in every state in the country.

For these reasons this Commission is not in favor of the amendments to the law proposed in these three bills.

The Traffic Congestion Hazard.

References have already been made to the briefs of the Automobile Bureau of 1928 and 1929, where attention was called to the traffic congestion along the North Shore

[1] Advance Sheets, Opinions of the Supreme Judicial Court. Ephraim A. Brest and others v. Commissioner of Insurance, January 7, 1930, pp. 113–123.

route, so called, which involves a similar hazard for the seven communities, Boston, Chelsea, Revere, Cambridge, Everett, Somerville and Winthrop, and also for the city of Lynn; and to the traffic congestion of the Lowell group of towns on the "through routes" to New Hampshire.

Is this traffic congestion hazard a creditable factor which should be taken into account before adopting the indicated pure premiums or loss costs of any one of the cities or towns involved?

Although accidents in which out of town cars are involved are not charged against the visited city or town, but to the city or town where the cars are principally garaged, yet the fact that they add to the traffic congestion makes it more dangerous for the car owners of those cities or towns to drive their cars.

Have we not here a common problem for all the cities or towns involved, and one for which no particular city or town is directly responsible?

No one can reasonably deny the facts, based on the two years' experience data of 1927 and 1928, that Chelsea and Revere had bad accident records. But were the Chelsea and Revere drivers entirely responsible for this bad accident record, or should they receive some credit for the congested traffic hazard caused by the North Shore route?

In 1930 the experience data for 1929 will be tabulated and classified. This will give three years' experience data to work with, and by increasing the volume of experience will make them more dependable for establishing averages.

The Commission is in accord with the well-recognized insurance doctrine that rates based on experience data rather than on judgment are the only sound bases upon which they should be calculated. The Commission realizes that the traffic congestion hazard is a judgment factor at least to the extent of the part it plays in the cause of accidents. The Commission recommends to the Insurance Commissioner and to the Automobile Bureau that earnest effort be made to convert this judgment factor into an experience factor. The Automobile Bureau already collects data as to the city or town where accidents

happen. If these data were tabulated and analyzed it would show how many out of town cars were involved in accidents in every city and town, and where these out of town cars were principally garaged. From these and other experience data the congested traffic hazard might be mathematically determined so that it could be used as a percentage credit factor.

In our entire study of the basic principles of rating, the members of this Commission are impressed with the abundant and repeated evidence of the absolutely indispensable value of actual experience data, covering a period of years, in setting up a schedule of rates which will be "adequate, just, reasonable and non-discriminatory."

Insurance Commissioner's Determination of Classifications of Risks by Types of Cars and the Fixing of the Pure Premiums.

After the determination of the territorial classifications of risks by the Commissioner, he determines the classifications of risks by types of cars within these territories.

Private passenger cars are divided into three classes, — W, X and Y, depending on list price, weight, wheel base, cylinder displacement and brake horsepower (page 204). Commercial cars, public cars, etc., are also classified.

The experience data show the indicated "pure premiums" or loss cost per car for each type within each territorial classification (page 207). If there is insufficient volume of experience in any territory for the different types as classified, *i.e.*, W, X and Y passenger cars, then differentials are used, based on the experience of other similar territories where the volume of experience is adequate (page 227).

After examining these experience data the Commissioner determines the pure premiums or loss cost for the various types and classes of cars within each classified territory. The prime factor in the calculation of rates is this "pure premium," or the amounts paid or reserved by insurance companies for losses or claims.

Determination of the Expense "Loading" or Allowance by the Insurance Commissioner.

Having determined the classifications of risks as to territories and types of cars as fair and reasonable, and having determined the "pure premiums" or loss cost for these classifications, the Commissioner must determine, upon the basis of the combined experience of the stock companies, the expense "loading" or allowance which is used to convert the "pure premiums" into gross rates or premium charges (page 227).

The stock insurance companies' expense items cover administration, investigation and adjustment of claims, taxes, contribution to cost of Automobile Bureau, acquisition, *i.e.*, commissions paid to agents, brokers, and to general agents for field supervision (pages 229–230). The Commissioner determines what percentage of the premiums received by these stock companies he will allow for each expense item and for the total. The amount of the expense items and the percentages asked for by the companies and determined upon by the Commissioners are given in an expense "loading" or allowance table, page 43.

"Acquisition" Expense, including General Agents' "Field Supervision."

Sometimes these expenses are listed separately, but are here considered together as "acquisition expense."

The only material changes made by the various Commissioners in the percentages asked for by the insurance companies have been in the "acquisition" item. The services performed by agents and brokers under the present law, which are commonly and rather misleadingly classified as "acquisition" services, are dealt with fully in another part of this report. (Pages 56–62.) A summary of this "acquisition" expense is given on pages 229–230.

There follows a table showing the percentage of premiums retained by agents and brokers as commissions:

"Acquisition" Expense — Percentage of Premiums retained as Commissions.

Motor Vehicles.	Local Agents or Brokers.	Regional Agents.	General Agent.		Total Commissions.
			Without Regional Agent.	With Regional Agent.	
Massachusetts statutory coverage 1929 and 1930.	7–10	1	2–5	1–4	12
Massachusetts extra-territorial coverage.	17½	2½	7½	5	25
Massachusetts excess limits premiums	17½	2½	7½	5	25
Massachusetts property damage and collision.	20	–	–	5	25
Other states now and Massachusetts before the motor vehicle liability insurance law.	17½	2½	7½	5	25
Massachusetts Workmen's Compensation Insurance.	10	2½	7½	5	17½
Massachusetts motor vehicle fire insurance.	20	–	–	5	25

In 1926 former Commissioner Monk allowed an "acquisition" expense of 15 per cent for 1927 which was 10 per cent less than paid prior to the motor vehicle liability law and 2½ per cent less than allowed under Workmen's Compensation Insurance. (See table above.)

The actual acquisition expense of the stock companies under this law in 1927 was 19.79 per cent of their earned premiums as against the 15 per cent allowed. On the basis of these figures they asked for 20 per cent for the year 1929.[1] Mr. Monk proposed 17 per cent, but after he resigned the Acting Commissioner fixed the acquisition expense for 1929 at 12 per cent.[1] This was 3 per cent less than allowed in 1927 and 1928, 5½ per cent less than allowed under Workmen's Compensation Insurance, and 13 per cent less than paid prior to 1927.

Services of Agents and Brokers as "Middlemen."

The middleman is peculiarly needed for the convenience of the car-owning public. There is no better evidence of that fact than the present almost universal practice of

[1] See expense "loading," page 43.

dealing with insurance agents and brokers, although it is not necessary. We have seen no evidence whatever that the car-owning community wishes to "get rid" of agents and brokers. On the contrary, we believe that they want them as much as ever. We are informed that the agent's commission under the present law, coupled as it is with the continuance of the demand for service which car owners expect from their agents, has placed many insurance agents throughout the Commonwealth in a serious situation, owing to the fact that their returns from the Massachusetts motor vehicle insurance placed through their offices are insufficient to meet their necessary expenses, and allow a reasonable profit. The only reason why they do it at all is that if they intend to continue in the insurance business their customers in other lines of insurance expect them to look after their interests in motor vehicle insurance as well.

This is not, in our opinion, a sound business situation for the state to create.

We think it is a safe guess that at least 99 per cent of the people of Massachusetts who carry any insurance at all on anything want to get the advice and attention of some insurance agent whom they know and whom they expect to serve them, not only in the matter of the policy but often in the matters of renewing registration, getting new number plates, advising them as to how much and what kind of insurance they ought to have, looking after their interests if they have any kind of accident, presenting and often attending to the settlement of a claim for them if it is small in amount, and in presenting a claim for them, whether it is small or not. Many car owners also expect their agent or broker to act as a temporary bank, and loan them the amount of the premium and the registration fee, without interest, for a month or two until they find it convenient to pay.

Valuable as these services may be to the assured, many of them cannot be included as necessary expenses in the establishment of "adequate" rates under the present law. We cannot be oblivious to the interests of this considerable

number of our citizens, and of such fair consideration as their services and means of livelihood merit. They are a useful and respected unit of society, owning property and paying into the treasury of this Commonwealth a large amount of money through taxation and license fees, and they are entitled to receive a fair remuneration for their services.

In an address delivered by former Insurance Commissioner Clarence W. Hobbs in Canada, September, 1928, he refers to the agents' services as "middlemen" as follows (p. 22):

> But yet it can hardly be claimed that the insurance agent has no place and function. He provides ready and convenient access between insurer and insured, gives a means whereby the insured may learn by word of mouth and personal discussion of rates, policy forms and coverage, acts as a go-between in negotiations, and adviser and helper in making claims and adjustments. He at times champions the cause of the insured, even against the interests of his own company. He smooths out many a difficulty, and emollifies many a grievance. Above all, he serves as an effective missionary in the cause of thrift and business sense, and exponent of the instruction of the community in the great and vital art of looking after itself. He furnishes to what is otherwise a cold and impersonal business transaction a vital, personal, human element; and so long as men are men, they appreciate these qualities and are willing to pay for them.[1]

Opinion of the Attorney General on "Acquisition" Expense.

Insurance commissioners, in allowing only 12 per cent for the total "acquisition" expense, have been acting in accordance with an interpretation of the law recently confirmed by an informal opinion of the Attorney-General. This opinion was reduced to writing in a letter from the Attorney General to the Commissioner dated January 8, 1930, in answer to a letter from the Commissioner of January 7, 1930. The Commissioner said:

[1] Address entitled: "The State and Workmen's Compensation Insurance," delivered to the Association of Superintendents of Insurance of the Provinces of Canada at Regina, Saskatchewan, Canada, September 19, 1928, by Clarence W. Hobbs, Special Representative, National Convention of Insurance Commissioners on National Council on Compensation Insurance, New York City.

It is a common practice for insurance agents and brokers to render various services to the persons who apply to them to procure these policies or bonds. These services include the rendition of information on questions pertaining to the compulsory automobile liability insurance law and policy provisions, the filling out and filing of applications for registration, the obtainment of renewal of registrations, the procuring and delivery of number plates, assistance in negotiating claim settlements, and advancing registration fees or premiums on these policies or bonds.

In practice an insurance agent operates as a sort of independent contractor for the company which he represents, in that he maintains and pays the expenses of operating his own office and has his own employees. In the western part of the State particularly the agents are the only representatives of the company available to the insuring public.

There is a distinction under the statutes between an insurance agent and an insurance broker. The insurance agent is the representative of the company, and the insurance broker is ordinarily the agent of the insured except for the purpose of collecting a premium, in which case, by statute, he is made the agent of the insurance company. (See Michelson *v.* Franklin Fire Insurance Company and cases there cited, 252 Mass., 336; G. L., c. 175, §§ 162, 163, 166, 169.) In view of this distinction it is apparent that when an insurance broker renders any of the services above stated he is rendering them as an agent of the applicant for insurance and not as an agent of the insurance company.

The Commissioner then requested the Attorney General's opinion on two questions of law, — whether he has authority (under G. L., c. 175, § 113B, as amended) to provide in the schedule of premium charges which he fixes and establishes under the said section a reasonable "loading" or allowance to compensate (1) agents, (2) brokers, for the services severally rendered as specified.

These two questions of law were answered in the Attorney General's opinion of January 8, 1930, as follows:

I answer both your questions in the negative.

I do not mean by this, however, to intimate that the actual cost to the insurance companies themselves of the necessary services rendered directly to them by the agents, for which they are obliged to pay the latter, may not properly be taken into consideration by you in establishing premium charges which are required by the statute to be both reasonable and adequate. There can be no loading or allowance reflected in the premium charges to be fixed as between the companies

and their insureds, which is made for the specific benefit not of such companies but of insurance agents or insurance brokers. The premium charges are to be adequate as regards the insurance companies; they are not required to be adequate to compensate others. A premium is to be paid by an insured to a company upon a contract to which they are the only parties. The premium charges are to be fixed by the Commissioner in connection with such contract only with direct relation to the two contracting parties alone.

With regard to the items of service, so called, commonly rendered by agents or brokers, such as are mentioned on pages 1 and 2 of your letter, these are rendered not to the company but directly to the agents' clients or even to the clients of a broker, and are of value to the insurance company only indirectly. It is sometimes said that if these services were not performed by the agents the companies would have to hire and pay employees of their own to perform them. If the companies did so hire and pay employees of their own, an actual, ascertainable item of expense would accrue to the companies which the Commissioner might be bound to take into account in fixing premium charges as between the companies and the insureds. However, the companies do not, in fact, incur the expense of employees to perform such services, and as such expenses of the companies do not therefore exist in fact, they cannot be used to load up the expense item of such companies, which alone is properly to be charged up as affecting the premium paid insureds.

An insurance agent is not an employee or servant of a company. He ordinarily maintains his own office, and the company is not required to pay or reimburse him for whatever expense he may elect to incur in running the same or in dealing with his clients. An insurance broker is in an even less direct relation with the insurance company.

To compel the insured to pay overhead and other similar items of expense incurred by an agent or a broker in the pursuit of the latter's own business by a direct imposition levied for the purpose, or indirectly by some arrangement between a company and the Commissioner, in the form of an increased premium charge, does not appear to have been the intention of the Legislature when it made provision for the fixing of rates as between insurer and insured, which were to be just, as well as reasonable, and non-discriminatory.

In the absence of specific legislative direction as to the inclusion of the expenses of agents or brokers, such as are mentioned in your letter on pages 1 and 2, you are without authority to add such expenses to the actual expenses incurred by the insurance companies, for the purpose of fixing premium charges. In none of the provisions of G.L., c. 175, § 113B, as amended, is there specific direction for such inclusion of the expenses of agents or brokers as loading charges in connection with the establishment of premium charges to be paid by insureds.

THE DIFFICULT POSITION OF GENERAL AGENCIES AND LOCAL AGENTS AND BROKERS.

Insurance commissioners, therefore, acting under this interpretation of the law in the 1929 and 1930 rates have allowed for "acquisition" expense only 12 per cent of the premiums collected, which represents the cost to the insurance companies *themselves* of the necessary services rendered *directly* to them by the general, regional or local agents or brokers.

The basis of this 12 per cent acquisition expense has been the actual cost of general agents of 10 per cent of their premiums for general office expenses and 2 per cent for "field supervision" expenses.

Although a general agent, in accordance with the ruling of the Attorney General, is entitled to 12 per cent of his collected premiums for "acquisition" expense, as he deals directly with the insurance companies, in practice he only receives 1 to 5 per cent after the local agents or brokers have retained 7 to 10 per cent instead of 17½ per cent prior to 1927 and the regional agent 1 per cent. (See table, page 56.)

Of course if a general agent gets direct business, such as the renewal of the policies by regular customers, he gets his full 12 per cent commission, which relieves the situation to some extent, but as the bulk of his business is handled through agents or brokers, he only retains the 5 per cent, as stated above.

The result of this motor vehicle law has been that local agents or brokers lose at least 7½ per cent of their collected premiums on the statutory coverage, or, in the case of a $25 premium for one car, the difference between $4.38 and $2.50.

The general insurance practice is for general agents to receive their insurance business through the efforts of local agents and brokers. It is true that the latter perform many services for their insured which are not *directly* connected with the insurance companies, such as general advice on insurance questions, filling out registration

blanks, etc., but in collecting the premiums they act as *agents* for the insurance companies and are allowed a percentage of these premiums by the general agents as commissions. The only payment which general or local agents and brokers receive for all the services of every kind which they render is therefore paid for out of the premiums which they collect as agents of the companies. While it is called "acquisition" expense, it seems to be "service" expense, for the companies as well as the insured get the benefit of the service.

We thus have a situation where the general agent is allowed 12 per cent for acquisition expense because he deals *directly* with the insurance companies, but in practice the local agents or brokers receive 7 to 10 per cent of this 12 per cent although they do not deal *directly* with the insurance companies but *indirectly* through the general agent.

If the services performed by local agents or brokers are to be recognized and included as part of the "acquisition" or "service" expense, then it will be necessary for the General Court to secure an opinion of the Justices of the Supreme Court as to whether payment for such services can be included by the Commissioner under the present motor vehicle law as part of the expense allowance, and if not, then to amend the present motor vehicle insurance law so that such services can be compensated for in the rates.

Allowance for Profit.

To the percentage of earned premiums to be allowed for expenses the Commissioner adds a percentage to allow for a reasonable profit to the insurance companies. Since the law went into effect, $2\frac{1}{2}$ per cent of the earned premiums has been added to the expense allowance for profit.[1] This is the same percentage allowed for many years under Workmen's Compensation Insurance.

[1] See expense "loading," page 43.

Fixing of Rates.

Having determined the classifications of risks as to territories and types of cars, the "pure premiums" or loss cost for these classifications, the expense and profit allowance, the Commissioner fixes the rates. This is a simple mathematical formula, as follows:

Pure Premiums ÷ 1.00 minus the percentage of expense and profit allowance = rates or premium charges.

The Commissioner then holds a public hearing on his proposed rates, and thereafter issues a finding and order with a schedule of classifications of risks and a schedule of premium charges, and by this memorandum (under G. L., c. 175, § 113B, as amended by St. 1929, c. 166) the Commissioner fixes and establishes the premium charges to be charged by insurance companies under G. L., c. 90, § 34A.

A SYNOPSIS OF AVERAGE INSURANCE RATES ON ALL PRIVATE PASSENGER CARS IN BOSTON, CAMBRIDGE, CHELSEA, EVERETT, REVERE, SOMERVILLE AND WINTHROP, COMMONLY KNOWN IN 1929 AS TERRITORY I, BEFORE AND UNDER THE MOTOR VEHICLE LIABILITY INSURANCE LAW.

The experience statistics for Territory I, based on policies written in 1923, indicated an average rate of $54 per passenger car and in 1924 an average rate of $52. The experience figures based on policies issued in 1924 were used in 1926 as a basis for the rates to be established by the Insurance Commissioner, Mr. Monk, for the year 1927.

Rates established for 1927.

The passenger car exposure, *i.e.*, car years or number of cars insured for a full year, for 1924 was 42,739. Nobody knew what this figure would be in 1927 when all passenger cars had to be insured.

The insurance companies estimated and recommended for Territory I an average rate of $50 per car. The loss cost[1] "without any expense allowance" for all passenger cars in 1924 had been $23.41, and the companies estimated that this would be increased to $28.30 for 1927. The Commissioner estimated that the loss cost per car in 1927 would be proportionately less with more cars insured than in 1924, and established the loss cost at $22.22. On September 1, 1926, he established rates for W, X and Y cars which averaged $37 per car for the year 1927, which was $15 per car less than the experience for 1924 indicated, and $13 per car less than recommended by the insurance companies.

In 1924 the percentage of premiums needed to pay losses or the loss ratio was 45 per cent, the remaining 55 per cent being used for expenses and profit. The insurance companies had estimated that the loss ratio would be 56½ per cent in 1927, but Mr. Monk reduced the percentage to be allowed for expenses and profit and established the loss ratio at 59.8 per cent for 1927.

1927 Experience Data.

A comparison of the actual experience data in Territory I for 1927 with 1924 showed that the car exposure had increased from 42,739 to 92,704, an increase of 116 per cent, the incurred losses from $1,000,500 to $3,061,500, an increase of 200 per cent, and the premiums from $2,225,800 to $3,151,600, an increase of 41 per cent. In other words, the increase in premiums due to the increase in number of cars insured was far less in proportion than the increase in cars and in losses. The percentage of premiums established by Mr. Monk in 1926 to pay losses was 59.8 per cent, whereas the actual experience for Territory I showed that 97.1 per cent of the premiums had to be used or reserved for the payment of losses. The losses per car in Territory I were

[1] Loss cost or pure premium is the average loss payment per car made by the insurance companies, together with the reserve required to be set up by them for unsettled losses. It does not include any amounts paid by the companies as expenses for carrying on their business or for settling claims.

$33.03 instead of $22.22 as established, and $28.30 as estimated by the insurance companies.

As indicated by the actual experience data of 1927 the average insurance rate per car should have been $55 for Territory I instead of $50, as recommended by the insurance companies, and the established rate of $37. If this average rate of $55 had been established there would have been produced $5,120,000 of premiums, instead of $3,151,600 actually produced for Territory I with the average rate of $37, a difference of $1,968,400.

No recommendation or change was made in the insurance rates for 1928, as the statistical experience figures for 1927 were not available until too late in 1928 to be used.

1929 Rates.

With the actual experience statistics of 1927 available, Insurance Commissioner Mr. Monk, as provided by law, had to fix and establish on September 1, 1928, the rates for 1929. He was faced with a difficult task. The average rate to be established for 1929, based on the actual experience data of 1927, called for $55 per car in Territory I, but this meant an increase of $18, or nearly 50 per cent over the rate of $37 in effect for 1927 and 1928.

The insurance companies proposed an increase in the expense allowance and asked for an average rate of $58 per car for 1929 in Territory I, or $3 more than the indicated experience rate of 1927 of $55, an increase of 5 per cent. A comparison of the loss cost per car for the first five months of 1928 with 1927 indicated that the losses per car would be greater in 1928 than in 1927. There was no doubt that the insurance companies had lost money in 1927, and would probably lose money in 1928, and some increase in rates was necessary, as under the law the Insurance Commissioner was required to fix and establish premium charges which were "adequate."

Insurance Commissioner Mr. Monk proposes Rates for 1929 and Resigns.

On August 17, 1928, Mr. Monk held a public hearing and presented the rates which he proposed to fix and establish on September 1, 1928, as provided by law. For Territory I he proposed an average rate of $54, which was $1 less than the average rate of $55, as indicated by the actual experience data of 1927, and $4 less than the average rate of $58, recommended by the insurance companies.

This proposed increase in the average rate for Territory I from $37 to $54 caused considerable agitation. Mr. Monk took the position that he had no choice in the matter, as the experience statistics for 1927 made such a rate compulsory if, as the statute required, the premium charges were to be "adequate." He refused to reduce his proposed rates and on September 1, 1928, he resigned his position of Insurance Commissioner by a writing addressed to the Governor, in which he said:

> Either I must promulgate the rates as computed by me and the department, or I must resign my office. . . . If I promulgate the rates as proposed by me, I am placed in the position of defying the Chief Executive of this Commonwealth. . . . The result is that no memorandum revising these rates will be filed by me. . . . As I view the whole matter now, this unusual situation of an under executive having to contest with his superiors in authority, is the result of an attempt to solve a mathematical problem by the introduction of a factor of political expediency. This is neither right or proper.[1]

No memorandum of finding and order was filed September 1, 1928, and on the petition of some of the largest insurance companies the matter was taken to the Supreme Court, which decided that no rates had been fixed for 1929 and directed the Acting Commissioner of Insurance to forthwith fix and establish classifications of risks and premium charges for the year 1929.[1]

[1] Liberty Mutual Insurance Company and others against Acting Commissioner of Insurance and others, Advance Sheets, Opinions of the Supreme Judicial Court, page 1827, November 3, 1928.

1929 Rates fixed by Acting Insurance Commissioner.

Acting Insurance Commissioner Mr. Linnell held a public hearing on November 14, 1928. On November 17, 1928, he fixed an average rate of $50 per car in Territory I for 1929. This was a decrease of $4 from the rate proposed by Mr. Monk, a decrease of $5 from the rate as indicated by the experience of 1927, and an increase of $13 over the rate of $37 established for 1927 and 1928, or 35 per cent. Mr. Linnell was able to make this reduction of $4 from the average rate of $54 proposed by Mr. Monk by revising the figures for outstanding losses and by reducing certain expense items to be allowed the insurance companies.

Problem of Establishing 1927 Rates.

The whole difficulty with the situation in regard to the rates for 1929 was not that they were too high, but that the rates for 1927 and 1928 had been fixed too low.

In 1926, without statistical experience data obtainable from any source upon which to base rates with mathematical precision for the insurance of all Massachusetts cars, it was problematical what the actual experience data would show, and Insurance Commissioner Mr. Monk, with what data there were before him, exercised his best judgment in fixing an average rate of $37 for Territory I.[1] His conclusions, based on his best judgment in 1926, were not borne out by the experience data of 1927 when it became available, and the rates he proposed for 1929 were based on the actual experience figures of 1927.

[1] See Appendix B for extract from Annual Report for the year ending December 31, 1926, Part II, pp. 4 to 6, where the Commissioner discusses the problem he had to deal with.

1927 and 1928 Experience Data.

In 1929 the experience data for 1928 became available. These data were almost identical with those of 1927 as they affected Territory I. The loss cost per car was the same as in 1927, namely, $33.03. As in 1927, the average insurance rate for 1928 should have been $55 per car for Territory I instead of $37, as established. If an average rate of $55 had been in effect the premiums produced would have amounted to $4,860,000, whereas only $3,017,800 were received from Territory I with the average rate of $37, a difference of $1,842,200. Therefore, taking the amount Commissioner Monk had allowed for 1927 and 1928 to pay losses, expenses and profits in Territory I the premiums received in those two years had fallen short of this amount by $3,810,600.

Consideration of 1930 Rates.

When considering, in 1929, the rates to be fixed for 1930 the Insurance Commissioner had before him the combined experience data of 1927 and 1928, which indicated an average rate of $55 per car for Territory I.

With these two years of experience statistics available, the insurance companies proposed that Territory I, comprising Boston, Cambridge, Chelsea, Everett, Revere, Somerville and Winthrop, be subdivided into four territories. They proposed to put Chelsea into a new Territory I, Revere into a new Territory II, Boston into a new Territory III, and Cambridge, Everett, Somerville and Winthrop into a new Territory IV.

The experience figures of 1927 and 1928 for these four territories were materially different, and they considered that there was enough credibility exposure in each territory to give it its own rating.

In Chelsea and Revere the losses had substantially exceeded the premiums received. Chelsea showed that losses were 162.2 per cent of the premiums, and Revere, 136.1 per cent, whereas in Boston the losses were 96.9

per cent of the premiums, and in the four other municipalities combined, 84.7 per cent.

The loss cost per car as shown by the experience data of 1927 and 1928 was as follows:

	Loss Cost.
Chelsea	$54 93
Revere	46 00
Boston	33 25
Cambridge, Everett, Somerville and Winthrop	28 64

INSURANCE COMPANIES' PROPOSED RATES FOR 1930.

Based on these experience data of 1927 and 1928 the insurance companies proposed that the rates for these four new territories be fixed for 1930, as follows:

	Average Rate Proposed for 1930.	1929 Territory I, Average Rate.	1927 and 1928 Average Experience Rate, Territory I.
Territory I, Chelsea	99	50	55
Territory II, Revere	83	50	55
Territory III, Boston	60	50	55
Territory IV, Cambridge, Everett, Somerville and Winthrop.	52	50	55

This proposal meant an average increase for Chelsea of $49 over the 1929 rate, or 98 per cent; for Revere an average increase of $33, or 66 per cent; for Boston, $10, or 20 per cent; and for the other four municipalities, $2, or 4 per cent.

1930 RATES FIXED.

Commissioner Brown agreed to the proposal to subdivide Territory I into four new territories, but by reducing the amount asked for by the insurance companies for expenses the proposed rates were revised as follows:

	Insurance Companies Proposed Average Rate for 1930.	Revised Average Rate for 1930.	1929 Average Rate.
Territory I, Chelsea	99	85	50
Territory II, Revere	83	71	50
Territory III, Boston	60	52	50
Territory IV, Cambridge, Everett, Somerville and Winthrop.	52	45	50

These revised rates showed an average increase of $35 for Chelsea, or 70 per cent; of $21 for Revere, or 42 per cent; of $2 for Boston, or 4 per cent; and an average decrease for the other four cities of $5, or 10 per cent.

However, as there had been an improvement in the accident records of Chelsea and Revere automobiles in 1928 over 1927, Mr. Brown, after a public hearing, fixed the rates of these two cities as the mean between their 1929 rate and the revised rate for 1930, as follows:

	Revised Average Rate for 1930.	1929 Average Rate.	Average Rate fixed for 1930 (Mean Rate).
Territory I, Chelsea	85	50	68
Territory II, Revere	71	50	61

The 1930 average rates for Boston, and for Cambridge, Everett, Somerville and Winthrop, were fixed at the revised rate of $52 and $45.

The result of these changes in rates for 1930 was that there was an average increase of $18, or 36 per cent for Chelsea; $11, or 22 per cent for Revere; $2, or 4 per cent for Boston; and an average decrease for the four other municipalities of $5, or 10 per cent.

A comparison of private passenger car average rates for Territory I as finally fixed by the Insurance Commissioner, with the average rates as indicated by actual experience statistics, follows:

	Manual Rates.	Indicated Experience Rates.
1923	55	–
1924	49	–
1925	49	–
1926	48	–
1927	37	52 (1924)
1928	37	52 (1924)
1929	50	55 (1927)
1930:		
Chelsea	68	85 (1927 and 1928)
Revere	61	71 (1927 and 1928)
Boston	52	52 (1927 and 1928)
Cambridge, Everett, Somerville and Winthrop	45	45 (1927 and 1928)

Private Passenger Cars.

Classification.

	Manual Rates, Territory I.			Insurance Companies, Recommendation for Manual Rates, Territory I.		
	W.	X.	Y.	W.	X.	Y.
1926	$41	$50	$61	–	–	–
1927	29	37	45	$39	$48	$60
1928	29	37	45	39	48	60
1929 (Insurance Commissioner)	52	52	69	56	56	73
1929 (Acting Insurance Commissioner)	47	47	62	56	56	73
1930:						
Chelsea	64	67	80	94	103	115
Revere	57	60	72	79	86	96
Boston	48	53	59	56	62	69
Cambridge, Everett, Somerville and Winthrop.	43	44	56	50	51	65

Insurance Rates in Certain Territories in Different States, 1930.

[Extra-territorial coverage added to Massachusetts rates to make them comparable.]

	Approximate Population.	Passenger Cars.		
		W.	X.	Y.
New York City	6,017,500	$102	$110	$110
Chelsea, Mass.	49,800	67	70	83
Revere, Mass.	36,000	60	63	75
Troy, N. Y., and suburbs	72,300	53	67	85
Albany, N. Y., + 5 miles radius	120,400			
Boston, Mass.	799,200	51	56	62
Schenectady, N. Y., + 5 miles radius	93,300	49	62	78
Cambridge, Mass.	125,800	46	47	59
Buffalo, N. Y., + 5 miles radius	555,800	41	47	57
Providence, R. I., and suburbs	286,300	40	50	63
Syracuse, N. Y., + 5 miles radius	199,300			
Hartford, Conn., and suburbs	172,300	35	44	56
New Haven, Conn., and suburbs	187,900			
New York, suburban	–			
Rochester, N. Y., and suburbs	328,200	32	40	51
Worcester, Mass., and suburbs	197,600	24	29	38
Springfield, Mass., and suburbs	149,800			
Manchester, N. H.	85,700	21	26	34
Vermont	–[1]	16	20	25

[1] No city over 30,000.

State.	Number of Territories.	Number of Different Rates.
Massachusetts	9	8
New York	18	13
Connecticut	8	3
Rhode Island	3	3
Vermont	3	2
New Hampshire	2	2

"FAKE" CLAIMS AND COURT PROCEDURE.

I. "Fake" Claims.

It is very difficult to discuss this subject without the appearance of exaggeration or over-emphasis; but, as, in our opinion, and in the opinion of many others, it has a direct bearing on the problems before us, it must be discussed. We disclaim any suggestion that most claimants are malingerers, or that the Bar as a whole is engaged in objectionable practices. The Bar, however, has practically doubled in numbers in the last twenty-five years. The "Lawyers Diary" of 1904 listed about 3,800 lawyers in Massachusetts, of whom about 2,300 were located in Boston; while the current 1930 "Lawyers Diary" lists about 8,000 lawyers, of whom about 4,000 are located in Boston. Human nature tells us that some of so large a number of lawyers and their clients present a "moral" hazard in liability insurance (whether it be by private companies or a state fund plan) which must be studied and guarded against as far as is practicable. This "moral" hazard directly affects insurance rates, whether they are "flat" rates or "zone" rates. We do not think any lawyer or layman of experience will dispute this fact.

Being asked to advise the Legislature representing the people of the Commonwealth, we are in the position of a lawyer advising a client who is in a situation peculiarly open and attractive to the arts of imposters, but with no available means of ascertaining the number of imposters in the neighborhood. We must consider conditions, opportunities and human nature, and advise precautions suggested by such study.

There was much discussion at the hearings before us in regard to alleged "fake" or exaggerated claims, — the presentation of them by some lawyers who are said to secure them by various forms of "solicitation," the support of them by some doctors who are alleged to share in the presentation or exaggeration of the claim and in the proceeds, and the alleged unwarranted settlement of them by the representatives of insurance com-

panies, with the result that insurance losses, and consequently insurance rates, are increased by such settlements. Former Insurance Commissioner Monk while in office in 1928 made emphatic reference to such claims and severely criticized the lawyers and doctors concerned in them in connection with the increase in rates for 1929, which led to much agitation about the present law. Criticism of the settlement of claims was made in September, 1929, by citizens of Chelsea and Revere at the hearings before the Insurance Commissioner in regard to 1930 rates.

The Judicial Council in its fourth report (P. D. 144 of 1928) referred to the report of Judge Wasservogel in the judicial investigation of unprofessional or "ambulance chasing" practices which was conducted in New York in 1928, and to the report of a committee of the Philadelphia bar in regard to similar practices in that city. These reports were reprinted in the "Massachusetts Law Quarterly" for November, 1928, and copies of them have been furnished to the Commission.

After referring to these reports the Judicial Council said:

> To what extent the practice of lawyers in soliciting cases by means of runners or "lead" men, or through standing arrangements with doctors, hospital attendants, police officers or others on a contingent and split-fee basis, is followed in Massachusetts, we have no means of knowing. To what extent the practice of presenting fictitious claims, exaggerated claims, or claims for nervous shock to cover property damage in the hope of securing settlements from the insurance companies is followed here, we also have no means of knowing. There have been no investigations here like those in New York, Philadelphia or Milwaukee; on the other hand, human nature is very much the same in different places, and in any large city the same opportunities are apt to lead some members of the bar to forget proper professional standards and take advantage of such opportunities.
>
> At all events, it is common report that a 50–50 division between the lawyer and the client of the proceeds of a suit, whether obtained by settlement or verdict, is more or less common, and sometimes an even larger proportion is retained by the lawyer to cover doctors' fees and other expenses. With the opportunities for collusion with insurance adjusters, physicians and others, it is sufficiently probable that objectionable practices are followed here to such an extent as

to make it worth while to take action to prevent them. In view of the charges made by the insurance commissioner, we think that the public expects the Legislature, the courts and the bar to take such reasonable measures as may be needed to check in future such unprofessional practices as may exist.

Various recommendations were made by the Judicial Council which were referred to this Commission and will be discussed later.

Examinations of various claimants for unreported personal injuries were handed to the Commission from the files of the Registrar and have been read. The Attorney General's department had also examined these papers and many other reports of suspicious claims submitted to that department by various insurance companies as a result of the agitation of the subject in 1928. The Attorney General reported that an examination of the material thus submitted did not show sufficient evidence to warrant the initiation of criminal proceedings, that he had no power to summon witnesses to appear before him, and that his department was not equipped to conduct a general inquiry into possible unprofessional practices of the bar based on such suspicion as might be suggested by the material thus submitted (see Report of Attorney General, for 1928, pp. 25–26). He considered that inquiry into unprofessional conduct with a view to disciplinary action was the function of the bar associations. Former Commissioner Monk had made a similar suggestion as to the duty of bar associations. This problem of disciplinary investigations will be discussed later. At present we are concerned in stating the problem and the results of our own study of it in connection with its relation to the present law and the insurance rates thereunder.

The primary function of this commission *in this connection* is not disciplinary action for past occurrences, but to ascertain (so far as practicable within a limited time) what is happening, and to suggest workable measures for the future to improve the operation of the present, or any other, motor vehicle law, and to reduce the

effect on insurance rates of any undesirable practices that may exist. Motor vehicle owners, in particular, and the public, in general, have a direct interest in the judicial procedure relating to accident claims, for the reason that the increasing number of such claims clogs the court dockets, obstructs and delays in many ways the hearing and decision of other equally important litigation, enormously increases the expense to the public and litigants generally, and the judgments and settlements resulting directly affect the insurance rates.

It would have been impracticable and would have served no useful purpose for the Commission to enter upon an investigation of individual cases. The judicial investigation in New York occupied at least six months and involved not only the volunteered services of at least two lawyers for about a year to prepare for and conduct the inquiry, but also a considerable number of paid assistants and the summoning and examination of hundreds, or perhaps, thousands, of witnesses. To conduct such an investigation fairly, and to avoid, so far as possible, the injustice of undue publicity to individuals who might seem to be involved by mere appearances, would be a difficult task. This Commission was not created for any such purpose.

But the opportunities and inducements to the development of the art of claim-making, particularly in larger metropolitan communities with a large bar of rapidly increasing numbers composed of men of varied character, training, professional standards and means of support, are obvious to any one who reflects on human nature. These opportunities and inducements are naturally increased by an insurance law which results in the existence of a fund (*i.e.*, insurance) as a standing invitation to persons who may be disposed to present "fake" or exaggerated claims. There are upwards of 800,000 registered motor vehicles using the highways of Massachusetts besides the thousands of foreign cars. The population of Massachusetts is about 4,300,000. Many people need, and more of them want, more money than

they have. Malingering is a human practice, sometimes almost a habit, well known before the present automobile insurance law appeared on the scene. As already stated there are about 8,000 lawyers in Massachusetts listed in the current "Lawyers' Directory," and about 4,000 of them are located in Boston.

The facts above stated alone indicate possibilities which will naturally be reflected in the aggregate of claims presented to be disposed of by settlement or litigation, and which will, therefore, bear directly on the insurance rates.

Turning now to actual figures, the effect of the present insurance law on the volume of cases entered in the Superior Court is shown by the following table, compiled by the Judicial Council:

	Oct. to Feb., 1926-27.			Oct. to Feb., 1927-28.			Oct. to Feb., 1928-29.		
	Total.	Motor Vehicle.	Per Cent Motor Vehicle.	Total.	Motor Vehicle.	Per Cent Motor Vehicle.	Total.	Motor Vehicle.	Per Cent Motor Vehicle.
Barnstable	54	12	22.2	89	29	32.5	90	44	–
Berkshire	82	33	40.2	83	32	38.5	217	84	–
Bristol	414	129	31.1	519	271	52.2	446	258	–
Dukes	26	4	15.3	(no return)			11	2	–
Essex	666	312	46.8	1,053	736	69.8	1,207	602	–
Franklin	78	20	25.6	84	39	46.4	86	34	–
Hampden	609	193	31.6	687	308	44.8	869	402	–
Hampshire	54	22	40.7	69	36	52.1	86	53	–
Middlesex	1,585	635	40.0	2,323	1,369	58.9	2,331	1,432	–
Nantucket	8	–	–	8	–	–	9	9	–
Norfolk	430	222	51.6	608	276	45.3	574	382	–
Plymouth	261	87	33.3	243	150	61.7	308	176	–
Suffolk	4,615	1,243	26.9	6,921	3,476	50.2	6,704	3,559	–
Worcester	843	292	34.6	1,239	575	46.4	1,117	631	–
	9,725	3,204	32.9	13,926	7,297	52.3	14,055	7,749	55

The comparison of total entries for 1910, 1920, 1924, and each year thereafter, appears from the following table:

CIVIL CASES, SUPERIOR COURT.
Entries, 1910–1929.

YEAR ENDING —	NEW CASES ENTERED.		
	Jury.	Jury Waived.	Equity.
June 30, 1910	8,167	2,701	1,599
June 30, 1920	11,790	3,848	2,208
June 30, 1924	16,899	5,065	3,230
June 30, 1925	18,117	4,973	3,009
June 30, 1926	18,282	4,941	3,316
June 30, 1927	19,403	5,110	3,655
June 30, 1928	27,377	5,256	3,392
June 30, 1929	27,592	5,743	3,502

The above table shows a jump of 9,095 jury cases in 1928, the first court year after the present motor vehicle insurance law took effect, as compared with 1926, the last court year before it became the law.

This table, as pointed out in the Council report, shows that —

For the five months' period, October, 1927, to February, 1928, there were 4,201 more cases entered in the Superior Court than in the same period, October to February, 1926–1927.

Of this increase, 4,093, or 97.4 per cent, were motor vehicle cases.

Stated in totals, there were 3,204 motor vehicle cases entered in the Superior Court during the period October to February, 1926–1927, and 7,297 such cases during the same monthly period, 1927–1928. In other words, motor vehicle cases increased 127.7 per cent, while all other cases increased only 1.6 per cent.

The Council continues:

The Superior Court had on its docket, untried, at the close of the year ending June 30, 1927, 64,923 civil cases, of which 43,399 were jury cases. At the close of the year, June 30, 1928, the total number of untried civil cases in this court was 61,822, of which 45,217 were jury cases.

Heretofore, although motor vehicle cases crowded the calendars, only a modest percentage were actually tried. Defendants, especially the insurance companies, have found it more economical to settle than to contest claims. This attitude obviously relieved the courts

of just so much work. It was even thought, or hoped, that the compulsory insurance law would reduce the amount of motor vehicle litigation. This was a mistake; on the contrary, the compulsory insurance law has added largely to the number of court entries. . . .

There has been a somewhat insistent demand that the insurance companies fight more of their cases. The reason that so many are settled is that, although brought in the Superior Court, the legal right of recovery is so slender, or the actual damages are so small, that they can be adjusted for an amount less than that for which they can be defended. This class of cases (*i.e.*, those that can be settled for less than the cost of trial) is so large that it has a distinctive name, — that of "nuisance cases." . . . It is urged by some that these nuisance cases should be rendered unpopular by fighting them. Just what would be the result of such contests it is impossible to say, but it is clear that the present difficult situation would become infinitely more difficult if the insurance companies decide to contest all, or even a majority, of their cases, as a matter of policy. At present, probably, not over one case in ten of those entered ever comes to trial, and yet the Superior Court falls substantially behind with its civil calendar during the year ending June 30, 1928. If all the accident cases now on the Suffolk County Superior Court trial list were to be tried, it would take some years to finish that list alone, to say nothing of the cases that would be brought in the meantime.

In the study of the statistics of the Superior Court for the year ending June 30, 1929, made by Dunbar F. Carpenter, Esq., and reprinted in Appendix C, it appears that the condition above shown is getting constantly worse, and that while the court was about two and one half years behind its jury case docket, and in June, 1929, was trying cases of 1927, it is indicated that within a few years the court may be about five years behind its docket in Suffolk County. With all its other business, civil and criminal, the court cannot try more than about 2,500 jury cases each year. The study of the verdicts shows that about 50 per cent of the trials result in verdicts for the defendant, and of the verdicts for the plaintiff more than 42 per cent are for less than $500, and 60 per cent for $1,000 or less. And yet there were 41,800 cases untried on June 30 in which jury trial had been claimed.

Now what is the significance of this enormous increase in litigation and this great accumulation of untried jury

cases, in 50 per cent of which the jury finds no liability (when the cases are finally tried after a lapse of two years or more), and in from 50 to 70 per cent of the remainder of which the recovery is very small. On the figures alone the conclusion seems irresistible that a great many groundless or greatly exaggerated claims are brought into court. And just as most of the cases brought into court, perhaps 9 out of 10, are never tried, but are dropped or settled before they are reached for trial, so a still greater number of cases are settled without being brought into court, in order to avoid the delay and expense of trial. But until cases are settled or disposed of in court, insurance companies must maintain reserves, as required by law, to meet the liability if it is ultimately established. A claim may be groundless or greatly exaggerated in fact, and in the opinion of the insurance companies after investigation, but it may be very difficult to prove or be sure of this. The danger of sentimental verdicts of juries, particularly in cases in which children are alleged to have been injured, and to a lesser, but great, extent in almost all cases, is a very real danger. Witnesses truthfully, or otherwise, tell very different stories, and the result of any litigation is always more or less uncertain. Consequently, in the interest of economy, and therefore of the rate-paying policyholders, insurance companies settle, not only obviously honest claims when liability is clear, but large numbers of other cases, for relatively small amounts as compared with the amounts claimed, in order to avoid the danger of larger verdicts or because of their "nuisance" value rather than go to the expense and risk the uncertainty of trial. This appeared very clearly at the public hearings before the Commissioner of Insurance on the claims protested by citizens of Chelsea in September, 1929. The settlement of many cases briefly reported by insurance companies on cards seemed to the protestants from Chelsea suspiciously unnecessary. But it is impossible to report the whole picture of a case on a brief card, and when the insurance companies' files of the cases complained of were

produced at the hearing, showing the record of conflicting stories, the settlements by the companies seemed in most cases probably warranted as a matter of business judgment by the companies in the interest of lower rates.

Now how many malingerers are there in the community, who contribute to this "claim frequency," especially in the metropolitan district, where the rates are high? And how much does the bar and the medical profession contribute to the support and presentation, of such claims? No one knows the answer to these questions, but we have made some inquiries which seem rather illuminating.

THE REPORT OF THE COMMITTEE OF THE CONFERENCE OF BAR ASSOCIATION DELEGATES AT MEMPHIS IN OCTOBER, 1929.

The problem of accident cases in large cities in this country has reached such proportions that a Special Committee on Professional Abuses in Accident Litigation was appointed by the chairman of the Conference of Bar Association Delegates. The committee contained representatives from New York, Philadelphia, Chicago, Boston, Baltimore, Pittsburgh, Cleveland, Detroit, Milwaukee, St. Louis, New Orleans, Denver and Los Angeles, and included Mr. Isidor J. Kresel, who conducted the New York investigation in 1928, and Henry S. Drinker, Jr., the chairman, who was also the chairman of the committee which investigated the conditions in Philadelphia. As these men[1] have presented their report on a nation-wide problem, we reprint in Appendix D their picture of conditions in order that the Legislature and the citizens of Massachusetts may understand the problem which faces any large metropolitan community, and which, human nature tells us, must be faced in Massachusetts under a law which announces the existence of an insurance policy and thus invites claims. The following passage from their report is illuminating:

[1] One member of this Commission has also talked with both Mr. Kresel and Mr. Drinker about this problem.

While it is impossible, from available data, to state accurately what average percentage of the total recovery throughout the country in accident cases is absorbed by the attorney and his employees for fees and expenses, the Philadelphia committee made an analysis of the books of 85 lawyers engaged extensively in accident practice in 537 representative cases, of which 69 were litigated cases and 468 were settled before trial. Of the total of $228,773.59 collected from the defendants in the 69 litigated cases, the clients received $112,296.07, or 49.08 per cent. In the 468 cases settled before trial for a total of $480,986.21, the clients received $248,974.38, or 51.76 per cent. The amounts paid by the lawyers to runners and lead men for procuring these cases averaged about 15 per cent of the total recoveries, or about $107,500 out of a total of $709,759.80. The total legitimate expenses were $64,332.70. The total lawyers' fees deducted were $284,156.65, or 40.3 per cent, out of which they paid $107,500 for procuring the business, leaving about $175,000, or about 25 per cent of the total gross recoveries, to cover fees and proper office expenses.

It is believed that wherever the practice of ambulance chasing flourishes, the successful litigant ultimately receives but about half of the amount paid him by the defendant. This recovery is obtained often after years of negotiation or litigation, attended by loss of time, nervous strain, and stress of conscience. Where, as frequently happens, the claimant is in straitened circumstances, the period of delay is coincident with that of greatest need of ready funds.

We assume that some of the accident specialists at the Massachusetts bar in the metropolitan district are as ingenious in their system, and place as high a valuation on their services, as their brethren in Philadelphia and elsewhere. In 1904, long before our Workmen's Compensation Act, the special committee on relations between employer and employee, of which the late Carroll D. Wright, Henry Sterling and others were members, called attention in its report (page 39) to the fact that in case a suit follows an accident, "the real beneficiaries frequently are not parties to the litigation." We see no reason to suppose that conditions are different under our present motor vehicle law.

Of course, we must not suppose that the bar is responsible for all the problem. Of course, there are lawyers who refuse cases which they know to be false. Of course, lawyers may be imposed upon by their clients' stories, and it is proper for a lawyer to represent a client's claim if he

does not know it is false. There are plenty of ingenious and plausible clients who have a right to be fairly represented and to have their claims heard. We are not criticizing the bar as a whole. But when the law is such as to allow and encourage the admission to the bar of about 500 new lawyers annually, so that the bar has doubled in size in twenty-five years, and we now have about 8,000 lawyers in Massachusetts, of whom about 4,000 are listed in Boston, the idea of a "bar", in any professional sense, disappears, and we have simply a large number of persons whom the state has given the right to call themselves members of a bar. The following letter just published in the appendix to a report of a committee on legal training for the bar, in the "Massachusetts Law Quarterly" for November, 1929, emphasizes this fact:

LETTER FROM CHIEF JUSTICE BOLSTER.

COMMONWEALTH OF MASSACHUSETTS,
MUNICIPAL COURT OF THE CITY OF BOSTON,
COURT HOUSE, BOSTON, March 25, 1929.

DEAR MR. NUTTER: — I have submitted to the justices of this court your question as to the legal and other qualifications of attorneys practising at the bar of this court. We agree that, both because our civil entries exceed those of any other court in the state, and because it is here that the newly admitted attorney in the metropolitan district most often begins his practice, we have an exceptional opportunity to observe the qualifications of the younger bar. It is our opinion that, while the recent accessions contain a goodly proportion of attorneys in every way qualified to carry on the best traditions of the profession, there is an increasing proportion of attorneys lacking in the legal knowledge necessary to safeguard the rights of litigants, and in the moral calibre which the court has the right to expect of its officers. From which we conclude that, judged by its fruits, our system designed to screen out the undesirables is not serving its purpose.

We cannot assume at short notice to cite particular instances, even if we thought it proper to do so, but if your committee wishes to conduct a survey of our trial sessions by competent observers, we believe that our opinion will be amply confirmed.

Very truly yours,
(Signed) WILFRED BOLSTER,
Chief Justice.

That the condition reflected in this letter is not entirely confined to Boston, is indicated by the fact that with the economic depression in other cities, resulting in poor business for lawyers, the number of complaints against lawyers for misuse of funds, etc., made to the Grievance Committee of the Massachusetts Bar Association is increasing.

Solicitation of Business by Lawyers.

In all these discussions the practice of "solicitation" figures a great deal and is severely criticized. "Solicitation" is an objectionable practice, and for many years we have had a statute in Massachusetts about employing solicitors directly or indirectly. (See G. L., c. 221, § 43.) Such statutes are very difficult to enforce, and it appears from the report of Mr. Drinker's committee, already referred to (page 249), that "The extensive practice of ambulance chasing in New York developed in the face of a statute making the solicitation of such cases a penal offence." To quote again from Mr. Drinker's report, "The spectacle of the ambulance chaser and the claim adjuster racing to the bedside of the injured man for contracts or releases is an outrage on decency, disgusting to the average man and a disgrace to the profession."

That something of this kind must happen in the metropolitan district is suggested by the fact reported to us by representatives of the Boston Legal Aid Society, that since the Workmen's Compensation Law representatives of that society have been applied to and have represented large numbers of claims before the Industrial Accident Board, and that before the adoption of the present motor vehicle insurance law a number of persons injured in motor vehicle accidents used to apply to the representatives of the society for assistance, but that since the passage of the present law, which provides a known insurance policy against which claims may be made on a contingent basis with a strong chance of collecting something, there have been few of such cases brought to the society. This does not mean lack of con-

fidence in the society on the part of the public, as the legal aid work is constantly growing and gradually extending to other parts of the Commonwealth, as well as all over the country. The practical explanation of this fact must be that there is some system of more or less instantaneous notice to some lawyers of such accidents, with subsequent activity on the part of some one, and very possibly competitive activity on the part of a number of persons, to secure the right to be allowed to represent the claim.

Now while "solicitation" is an objectionable practice, opposed to the better professional standards, and also, if it is paid for, to the statutory provisions, the mere fact of solicitation is not the most serious part of the problem. A soliciting lawyer, after he has secured a case, may represent the client honestly and fairly in accordance with his oath of office and the highest professional standards — and then again he may not. Doubtless lawyers who make a practice of soliciting vary greatly in this respect. The most serious problem arises from practices which are apt to be incidental to soliciting, — a "building up" of cases; the perjury and subornation of perjury; the development among large numbers of persons who are, or may become, involved in motor vehicle or other accidents of the general practice of malingering for the purpose of extracting money out of somebody; and a development in the community of a claim-making state of mind which puts the blame for everything on somebody else and never admits negligence or fault of any kind. It is this aspect of the problem, rather than the mere soliciting, which furnishes the great "moral" hazard in liability insurance and separates personal injury litigation from other litigation in a problem class by itself for the public to deal with and the motor vehicle owners to pay for in their rates.

In an address in 1929, printed in the "Massachusetts Law Quarterly" for May, 1929 (at page 18), George R. Nutter, Esq., president of the Massachusetts Bar Association, said: "It is, of course, impossible to say how

much solicitation of business is now indulged in by the bar. I have been informed that in 1927 twelve lawyers presented claims, not, of course, always resulting in suit, to insurance companies, arising largely out of the Compulsory Insurance Act, to the following number: 408, 359, 348, 183, 177, 160, 148, 120, 107, 97, 95, 55."

Upon inquiry we were informed that this list was compiled for former Commissioner Monk.

Of this group we take the four highest numbers, — A, who had 408; B, 359; C, 348; D, 183. We have had the October general jury trial lists of the Superior Court in Suffolk County for 1928 and 1929 examined. This list includes all kinds of jury cases, whether for motor vehicle injuries or not. We find that these same four men appear as counsel as follows: in the 1928 list A appeared in 213 cases, B in 342 cases, C in 350 cases, D in 206 cases, — a total of 1,111 cases from four lawyers on the trial list in one county. There was only one other lawyer who appeared in more than 200 cases. He appeared in 310 cases. On the 1929 list we find that A appeared in 176 cases, B in 447 cases, C in 290 cases, and D in 139 cases, — a total of 1,052 cases, with B considerably in the lead. The fifth lawyer above referred to appeared alone in 336 cases, and with others in 72 cases, — a total of 408 cases.

At our request the Insurance Commissioner secured reports from the various companies of the names of lawyers who had presented more than ten claims against Boston cars in 1928, and in these reports from the larger companies we find the names of lawyers A, B, C and D standing out among others.

Turning now to the claim reports on cards sent in to the Insurance Commissioner by the various companies of claims in 1927 and 1928 in Chelsea, Revere and Lynn, we find that A presented 113 claims in 1927, and 107 in 1928; B presented 10 in 1927, and 12 in 1928; and C presented 24 in 1927, and 13 in 1928. Evidently this is a fertile field for lawyer A. Accordingly, the Commissioner had a table prepared from the cards in the Commissioner's office of all A's claims in these three cities in 1927 and

1928. As it is very interesting we print it in Appendix E, with the names of the parties and the doctors omitted. The table shows that, in 1927, A represented 113 claimants in 59 accidents, and in 1928, 107 claimants in 52 accidents. He appears to have collected from the insurance companies $16,289.30 in 1927, and $21,130 in 1928, — a total of $37,419.30, mostly in small amounts under $300, and generally without bringing suit. The same doctors appear in many of the cases, and the same accident frequently appears to produce from three to five claims which were settled each for a small amount. In one accident seven persons appear to have succeeded in getting $15 or more apiece.

Now, of course, we cannot say that there is anything wrong in the picture thus presented, but — it is interesting. If three or four lawyers have an aggregate of about 1,000 cases each year on the trial list in one county, and present no one knows how many claims to insurance companies which do not get to court, what does it all mean? There are a number of other lawyers who appear in large numbers of cases and claims of the personal injury variety. As we have said, it is very interesting. And we think it would be still more interesting to the car owners of Chelsea, Revere, Lynn, Boston and elsewhere to see what effect the changes in judicial machinery which we propose would have on the picture and on the total amount of losses. As we have said, every car owner in each territory has a direct personal interest in every claim presented to an insurance company, because it adds to the loss experience which has to be covered in the insurance rates. Therefore we submit for the consideration of the 800,000 or more car owners of the Commonwealth the changes in the machinery which we recommend for sifting claims.

Court Procedure.

Judicial machinery is a difficult subject to discuss, but as lawyers generally seem to take little interest in really effective changes in procedure, we feel that the time has come for laymen to take a more active interest in a

subject which affects their interests directly in many ways, and particularly, we believe, in their automobile insurance rates.

The usual suggestion made for meeting the accumulation of cases in the Superior Court where jury trials may be claimed is to add to the number of permanent judges of that court. Unless more effective and less expensive measures are thought out and adopted, it seems pretty clear from the picture of the accumulated and accumulating mountain of jury cases in that court that if these cases are ever to be tried the number of Superior Court judges at a salary of $12,000 a year will have to be very largely increased, and perhaps doubled, in the relatively near future in order to spend most of their time trying personal injury cases involving relatively small amounts.

The Superior Court was created in 1859 with ten judges. The number has gradually increased to thirty-two judges. Yet the court appears to be more congested than ever before. The tables in Appendix C show that the civil entries for the years ending June 30, 1928 and 1929, were about 9,000 more annually than in 1926, the last full year of voluntary insurance. That the number of entries will grow year by year as the number of automobiles rises seems inevitable. The clerk of the Suffolk Superior Court announced recently that the list of new civil entries in October, 1929, was 1,430, an increase of 514 over the entries for October, 1928. Accordingly, unless the judicial machinery is changed, plans must be made for dealing with at least 28,000 new jury cases a year. The tables also show that the number of civil entries has increased 152 per cent over the number entered in 1902, while the number of judges has increased only 77 per cent in the same period — from 18 to 32 — and even in 1902 the court was behind its docket. A litigant in 1902 had to wait about eighteen months for trial in Suffolk, and from fifteen to twenty-four months in Middlesex. If the number of judges is to be increased to reach the position in regard to its docket which the court had in 1902, it is estimated that we should need a

bench of 45 judges if we increase the judges in the same proportion of 152 per cent over the number in 1902, to match the increase in the entries. We have no desire to exaggerate the problem by too much emphasis on figures in the statistical table, but there they are — and they present a problem which must be faced, whether we have the present law or a state fund, for, in our opinion, the number of cases would be increased, rather than diminished, if the state were substituted for the insurance companies.

To a committee composed principally of men who are not lawyers, it seems unnecessarily dilatory and expensive for everybody to encourage and invite claimants to make use of the opportunity to claim a jury trial which will require, at the public expense, a $12,000 judge and twelve jurors at $6 a day, each to be chosen from a larger number of jurors also at $6 a day apiece, in order to determine whether somebody is entitled to a small sum of money for injuries from an automobile, about half of which is likely to go to the person's lawyer, in many cases, if the decision is in his favor.

It seems to us that the business men, the insurance rate payers and the general taxpayers of Massachusetts may well ask the Legislature to provide every reasonable method by which these cases may be disposed of without so expensive and slow and cumbersome a proceeding. It seems to us clear that while the Superior Court needs relief, merely increasing the number of judges available will not help matters in the long run.

We believe that machinery is needed to regulate the source of supply, and that as long as the present procedure exists the mountain of cases will continue to enlarge, no matter how many judges are added to the Superior Court.

What is to be done about it? One lawyer of long experience in defending and settling accident claims — a man who believes in the present insurance law as a protection to honest injured persons — stated his opinion that while the law protects injured persons, the machin-

ery of the law and the procedure of courts afford insufficient means of testing fraudulent or exaggerated claims, and insurance companies have no protection except negotiating settlements, or trial after years of delay. It was also brought out before us that many insured persons take no trouble to assist the companies by collecting evidence at the time of an accident, or even notifying the companies promptly that an accident has occurred. They take the position that they have no obligation in the matter, and leave the company to pay whatever is claimed or to find out the evidence for itself. Others expect a company to settle any claim rather than annoy them by calling them as witnesses, and make it difficult for the companies to find out what really happened.

The Need of a Requirement of Notice.

The insurance policies require the car owner to notify the company of an accident, but the statute (G. L., c. 175, § 113A) provides that failure to do this does not protect the insurance company, and in the recent case of Vance *v.* Burke (Mass. Adv. Shs. of 1929, p. 175) one company was obliged to pay a judgment of $4,000 obtained by default, of which the company had no notice whatever until the execution was presented to it for payment. The company had no opportunity to investigate the claim or defend the suit. The case of Vance *v.* Burke is not a solitary instance. We have heard of a number of such cases, and it is suspected that sometimes such a result may happen, even without fault on the part of the car owner, by having the writ served on him, as the statute allows, "at his last and usual place of abode," where it may be tucked under the door or left somewhere so that he may never see it, especially if he has moved to another place of residence. This sort of thing suggests that registered mail would be a safer and fairer method of service if the statute allowed it. But, at all events, insurance companies and the car owners who pay the rates should not be exposed to such extortion. It should be

realized that by making the insurance company directly liable for a judgment the Legislature has made the company an actual party in interest to the litigation, and as such fairly entitled to an opportunity to be heard on the facts.

The original draft of our present law as reported by the Commission of 1925 (Senate, No. 285 of 1925, pp. 66, 67) contained a section 34J, providing for notice within thirty days by an injured person before bringing suit. That section was not included in the act, but it seems to us fair and essential that there should be some requirement of reasonable notice.

The statutes have long required notice within thirty days in cases arising from snow and ice or defects in highways. The Workmen's Compensation Act (G. L., c. 152, §§ 41–44) requires "notice . . . to the insurer or insured as soon as practicable." As the name and address of the insurance company is easily obtainable from the Registry of Motor Vehicles, we think it only fair, in the interest of the rate payers, that both the company and the defendant car owner should be notified of the injury "as soon as practicable," and that they should both be notified of the bringing of a suit. Accordingly, our first recommendation is as follows:

SUBSTANCE OF DRAFT ACT AS TO NOTICE.

SECTION 1. No action shall be maintained for injuries resulting from the operation, etc., of a motor vehicle unless a notice in writing, signed by the injured person, or, in case of death, by his legal representative, stating the time, place and cause of injury, is given to the defendant and also to the insurer or other carrier of financial responsibility of the defendant if there be one. Sections forty-three and forty-four of chapter one hundred fifty-two of the General Laws shall apply to such notices so far as applicable.

SECTION 2. General Laws, chapter one hundred seventy-five, section one hundred thirteen, as amended by acts of nineteen hundred twenty-three, chapter one hundred forty-nine, section two, is hereby further amended by adding thereto the following: — but he may not maintain a bill in equity under said tenth clause to secure payment of a judgment which is required to be secured by chapter ninety, unless in the action in which such judgment is rendered in addition to service on the original defendant, notice of such service and a copy of the

process are sent forthwith by registered mail by the plaintiff or his attorney to the home office of the insurance, or surety, company issuing the certificate required by section thirty-four A of chapter ninety, or to the agent issuing the policy or bond, and the return receipt of the addressee, and the plaintiff's or his attorney's affidavit of compliance herewith, are filed with the papers of the case on or before the return day of the process or within such further time as the court may allow.

SECTION 3. In case of default no motion that damages be assessed shall be made until plaintiff has notified the insurer by registered mail of said default, and giving him days in which to move to set aside default and have the case heard on its merits.

SECTION 4. Section one hundred thirteen A of chapter one hundred seventy-five of the General Laws inserted by section four of chapter three hundred forty-six of the acts of nineteen hundred twenty-five, and amended by sections four and five of chapter three hundred sixty-eight of the acts of nineteen hundred twenty-six, is hereby further amended by inserting after the word "fourteen" in the line thereof the following: — but that failure of the insured to notify the company of an accident as required by his policy within the time specified shall be reported by the company to the registrar of motor vehicles, who may suspend the operating license of the insured with or without hearing upon receipt of such notice from the company.

NOTE.

Such failure might also be included in the grounds for demerit rating in the rules to be made by the proposed rating and control board.

GRADUATED ENTRY FEES IN THE SUPERIOR COURT AND THE PRACTICE OF CLAIMING LARGE AMOUNTS AS DAMAGES IN SMALL CASES.

One of the abuses in legal procedure is the practice of some lawyers of claiming very large damages in what is called the "ad damnum" of the writ. When this is done in cases in which an attachment of property is made, the defendant often has to apply to the court to reduce the amount of the attachment. The allegation in the writ of the amount of damages claimed is a purely formal allegation, especially in cases in which no attachment is made; yet it is not uncommon for some lawyers to insert an amount of thousands of dollars as the claim in the writ in a case in which the party or his attorney is eventually willing to settle for $75 or $100. The large sum claimed

makes the suit appear serious, particularly when the amount is read to the jury.

In order to check this practice and bring the amounts claimed within the reasonable limits of the facts, as well as to discourage the unnecessary use of the Superior Court for small cases, we recommend a graduated entry fee for cases in the Superior Court beginning with $5 in cases up to and including $1,000, with $1 additional for each $1,000, or part thereof, above the first $1,000.

We submit the following:

DRAFT ACT.

Section four of chapter two hundred and sixty-two of the General Laws is hereby amended by inserting between lines seven and eight the following new clause: — For entry of a libel for divorce or of a petition in the supreme judicial or the superior court in which no money is involved, or for filing a petition to the county commissioners, three dollars, — and said section is further amended by striking out lines eight, nine and ten through the word "dollars" in the tenth line and substituting therefor the following: — For entry in the superior court of an action at law or a suit in equity, an amount measured as follows: where the debt or damages demanded in the action at law or the amount involved in the suit in equity does not exceed one thousand dollars, five dollars; where such amount exceeds one thousand dollars, one dollar for each additional thousand or fraction thereof shall be added to the entry fee.

A PLAN FOR JUDICIAL ARBITRATION OF MOTOR VEHICLE CASES.

Thus far we have discussed the difficulties of insurance companies in dealing with claims. There is another side to the picture which is often referred to and which naturally presents itself as a result of reflecting on human nature. That is the difficulty of some honest claimants who may be ignorant of the methods of protecting their rights. Considering the business necessity of the insurance companies, which is in the interest of the rate-paying policyholders, of ascertaining the facts as promptly as possible and settling claims as cheaply as possible, some honest and unadvised claimants who cannot afford to wait are doubtless induced to settle and

sign releases of their claims for inadequate amounts. This may be induced by the effective and perhaps sometimes overzealous efforts of insurance adjusters or investigators, who may interview them as soon as possible after the accident in order to get ahead of some members of the legal profession who may be soliciting such cases in some way or other. This side of the picture deserves as much consideration as the other. The primary purpose of the present indemnity law of Massachusetts is not to secure excessive payments for unwarranted claims, but to secure justice, so far as is practicable, for honest persons who have been injured. There must be many honest injured claimants, particularly where the injury is not very serious, who do not want to be driven, or dragged into the hands of lawyers, but would rather accept some payment to settle the matter promptly, and they undoubtedly do so settle for some agreed payment and give releases without the advice of lawyers.

There must be many others who, while they do not want to go to lawyers, are not satisfied with the proposed payment offered by the representative of the insurance company, and would feel more fairly treated if they could have an opportunity to be heard promptly and without technical rules before a judge, and who would be satisfied to accept the decision of the judge without further proceedings. Many people complain today of what they consider technical rules and undue delay of courts. This is the basis of the growing movement for arbitration of business disputes outside the courts with laymen as arbitrators. But there are many people, as well as many lawyers, who are not satisfied with an arbitration by laymen, and would prefer to have a hearing and a decision by a regularly constituted court if they could have one without the delay and technical procedure. We see no reason why the community should not provide such people with a simple procedure for this purpose instead of forcing them to bring a suit in the ordinary manner with resulting expense to themselves and enormous expense to the public.

Accordingly we recommend and submit herewith a

draft act applicable to automobile cases which would enable a claimant and the person against whom the claim is made to agree in writing (as a voluntary alternative to the usual lawsuit) that the claim should be submitted to the District Court for the district in which the accident occurred, for a judicial arbitration, without a jury, without the rules of evidence, without appeal on the facts, and without appeal on questions of law unless requested by both parties, or unless a question is reserved by the judge for action by an appellate tribunal. In other words, we see no reason why as prompt and informed a *judicial* hearing cannot be provided as is provided under the existing arbitration law (G. L., c. 251, as amended by St. 1925, c. 294), for those persons who wish to submit their controversies to some lay arbitrator.

In the draft of the act submitted herewith a form is provided which could be signed by the parties who wish such submission to the courts, specifying the date and place of the accident, the name of the parties, the nature of the injuries, etc., for the information of the court. Such an agreement when signed could be entered in the court without the expense of serving writs, because both parties already have knowledge of the proceedings, and all that would be needed would be the payment of the entry fee of $1 by whichever party entered the agreement in court, and a payment of 18 cents postage to cover the notice by registered mail, return receipt requested, to the other party to the agreement, of the time and place for a hearing in court. Notice by registered mail is now being used successfully in the small claims procedure all over the Commonwealth. It has been used for thirty years in the Land Court, and it is also frequently used in the Probate Courts.

We submit the following:

DRAFT ACT FOR JUDICIAL ARBITRATION.

SECTION 1. Section two hundred eighteen of the General Laws is hereby amended by inserting after section nineteen of said chapter the following new section nineteen A: —

Section 19A. District courts shall have original jurisdiction to arbitrate claims arising out of motor vehicle accidents which are referred to them by agreement of parties who wish to secure a prompt, informal hearing and award without technical rules. Procedure for securing such arbitration shall be as follows. The following form of agreement shall be sufficient to bring the claim within the jurisdiction herein provided for:

A.B. of , claiming damages for personal injury or injury to property arising out of an automobile accident which occurred on street in the city or town of , on the day of , 19 , at about o'clock, and C.D. of , the person against whom said claim is made, hereby agree that said claim shall be arbitrated by the district court of , and an award made and judgment entered thereon which shall be final. If either of the parties herein named neglects to appear before said court after due notice given to him by registered mail at the respective addresses given above of the time and place appointed for hearing, the said court may proceed in his absence. It is part of this agreement that trial by jury of said claim, the right to file interrogatories except as allowed by the court, the rules of evidence and all right of appeal, exception or report for the purpose of reviewing the award and judgment of said district court is hereby waived.

Upon the entry in court by either party thereto of such agreement duly signed by both parties, accompanied by the payment of an entry fee of one dollar, and eighteen cents additional for postage, the clerk shall mail to the other party at the address stated in the agreement by registered mail, return receipt requested, a notice signed by the clerk of the time and place for hearing said claim.

The justices, or a majority of them, of all the district courts except the municipal court of the city of Boston, shall from time to time make and promulgate uniform rules applicable to said courts, and the justices of the municipal court of the city of Boston shall make rules applicable to that court such as may seem advisable to carry out the purpose of such procedure.

SECTION 2. This act shall take effect upon its passage.

If such a form of agreement for judicial arbitration were adopted, as we suggest, and the hearing of such claims under such agreements made a part of the regular business of the District Courts, we believe that in many cases honest claimants who wish a speedy, fair-minded hearing and settlement, and who are not satisfied with the offer of the company, would be glad to submit their cases and thus receive the impartial pro-

tection of a judicial hearing, and we believe that the insurance companies and the defendants would also feel that it was a fair method of proceeding in the interest of prompt disposition. This plan should also relieve the congestion in the Superior Court, already referred to.

In view of the cumbersomeness and expensive character of court procedure for the settlement of many simple problems, a condition which is constantly growing worse because of the enormous increase in litigation under modern conditions, we believe that the courts and the bar must overhaul their habitual and traditional methods of thought and learn to invent and adopt and practice under more expeditious machinery for the settlement of disputes, especially disputes of this character which now cause so much congestion. We believe that economic conditions demand this. If the courts and the bar do not co-operate in the near future in working out such expeditious methods, we believe that public sentiment, arising from an increasing interest in a more direct and businesslike administration of justice, will demand that whole classes of litigation, of which motor vehicle accidents furnish the larger class, be lifted out of the hands of the bar and the courts, even if it be in some arbitrary fashion, as the industrial accident cases were lifted from the courts to the Industrial Accident Board, in a way which practically eliminated the bar.

We believe that there is a marked difference between industrial accidents, which relate to a particular business, and automobile accidents, which have to do with the risks of, and negligence on, the public highways. We believe that it is a sounder policy to devise methods of settling disputes in the courts promptly rather than to distribute different classes of judicial problems among a variety of commissions outside of the courts. Judicial arbitration such as we suggest is a judicial proceeding which in our opinion has a legitimate place in the courts.

A Plan for Oral Examination of Parties and Witnesses before Trial in Motor Vehicle Cases.

Having thus suggested a prompt, informal and fair method of settling honest claims of those who wish them thus settled, with or without the assistance of lawyers, we now turn to the matter of procedure for dealing with claims of parties who are not willing to submit to such judicial arbitration. These claims may be honest, or they may be false or exaggerated. How shall they be sifted out so that each may receive such, and only such, consideration as the facts merit? It is a commonplace, in the discussion of the administration of the criminal law, to say that a prompt hearing and disposition of a case while the evidence is fresh, and before the whole story is stale, is the most important object to be attained as a deterrent to crime. In our opinion this same promptness of investigation, hearing and disposition is essential in dealing with automobile accidents and unwarranted claims arising out of them.

As pointed out by the Judicature Commission in its final report of 1920, Bentham a century ago criticized the orthodox legal methods of inquiry in many legal proceedings as "epistolary" as distinguished from the stronger and more direct "confrontatory" method which he advocated. Now, after a suit is brought, we have had for many years an "epistolary" method by which each party may examine the other by written interrogatories to be answered in writing. While this system is useful and has been much used, it is cumbersome, it takes up a large amount of time and effort upon the part of the judges in passing upon objections to certain interrogatories before they are answered, and it has the weakness of an astute, and sometimes evasive, question and answer writing contest between the lawyers over the signatures of their clients, with a view to getting as much and giving as little information as their respective consciences will allow. In some other states they have more direct methods, and the Judicature Commission called attention par-

ticularly to the statute of New Hampshire which allows each party to take the oral deposition of the other party and of witnesses at any time after suit is brought. These depositions are taken, like the deposition of any witness under our own practice, upon notice to the other party, and may be used at the trial unless the other party produces the witness.[1] Our practice allows such examination only of witnesses who are more than thirty miles from the place of trial, or who are so ill as to be unlikely to be able to attend the trial, and they cannot be used at the trial unless the illness or other reason for taking them still continues. We have no provision for an oral examination of the parties to the case until the actual trial is reached, which, as already pointed out, may be several years after the accident, when the memory of everybody may have been dulled, or unduly stimulated, to such an extent as to create more controversy than would arise if the story could be obtained under oath at an earlier period.

Now we believe that the apparent frequency of unwarranted or exaggerated claims in connection with automobile accidents in Massachusetts today under our law is such as to demand the experiment, in that branch of litigation, of machinery for the prompt oral examination of parties and witnesses to the suit similar to the machinery which they have in New Hampshire. In some states, as in Vermont and Wisconsin, the statutes go even further and allow the deposition of witnesses to be taken at any time after the occurrence of the accident and even before a suit is brought. But we do not recommend so drastic

[1] The New Hampshire law (Pub. St. 224, §§ 1 and 2, which have been in effect since 1867) extends to both parties and witnesses as follows:

"The deposition of any witness in a civil cause may be taken and used at the trial unless the adverse party procures him to attend, so that he may be called to testify when the deposition is offered."

Section 2 provides:

"Whenever the deposition of a party to an action has been taken it shall within ten days thereafter be filed in the office of the clerk of the court in which the action is pending. Either party may use the deposition upon the trial of the cause unless the deponent is in attendance."

Such deposition of the party may be used as a declaration or admission at the trial, even though the party is present in court (see Phoenix Mutual Life Insurance Co., 58 N. H., 164). It may also be used after the death of the party (see Bundy v. Hide, 50 N. H., 116).

an experiment as that. It seems to us that the opportunity given to either party to examine the other and witnesses orally after suit is brought is the first necessary method of sifting the character of claims sued upon.

The usual date fixed for the taking effect of statutes relating to the courts is September first, but, in view of the accumulation of business shown by the statistics in Appendix C of this report, and its consequent effect upon the Superior Court, we see no reason why the machinery which we suggest should not go into effect at once and apply to pending cases as well as those brought subsequent to its passage. This recommendation is made not only in the interest of justice between litigants, but especially in the interest of the insurance rate payers in Chelsea, Revere and elsewhere who are complaining of high rates and "fake" claims. We believe there may be some of these claims, now pending in the court docket which can be punctured by the machinery which we suggest.

We recommend a draft act, as follows:

AN ACT TO PROVIDE FOR THE ORAL EXAMINATION OF PARTIES BEFORE TRIAL IN MOTOR VEHICLE CASES.

Be it enacted, etc., as follows:

SECTION 1. Any party after the entry of a writ in an action for personal injuries caused by the operation, etc., of a motor vehicle may examine orally any other party, in the city or town within the commonwealth of the residence or usual place of business of the party to be examined, for the discovery of facts and documents admissible in evidence at the trial of the case. The word "party" in this act shall be deemed to include parties intervening or otherwise admitted after the beginning of the suit. Such examination may be used at the trial by the party taking the same or by any other party on paying the cost of taking the same unless the party examined is present at the trial of the case. Nothing herein shall be held to prevent the use of such examination as a declaration or admission of a party, if material, whether or not the party examined is present at the trial, or the use of such examination in connection with cross-examination of such party. Sections sixty-five, sixty-six and sixty-seven of chapter two hundred and thirty-one of the General Laws shall apply under this act.

SECTION 2. In order to make such examination any party may apply to a justice of the peace, notary public, or a special commissioner, who shall issue a notice to the party to be examined to appear before said justice, notary or commissioner at the time and place appointed for such examination. Sections twenty-seven and twenty-eight of chapter two hundred and thirty-three of the General Laws shall apply to notices of such examinations and the service thereof, except that notice shall also be given to all parties to the proceedings or to their attorneys of record, so that they may attend the examination.

SECTION 3. The party examined shall be sworn or affirmed, and his examination shall be taken in the same manner and subject to the same rules as if taken before a court, except that no witness shall be compelled to answer a question or produce a document if it would tend to incriminate him, or to disclose his title to any property, the title whereof is not material to the trial of the action in the course of which he is examined, or except by order of court to disclose the names of the witnesses by whom he proposes to prove his own case. The court shall at all times have full control of the examination.

SECTION 4. The party requesting the examination shall be allowed first to examine on all points material to the cause in which the examination is made. The party examined or his attorney may then examine in like manner, after which any party may examine further.

SECTION 5. The examination shall be taken by a stenographer appointed by the justice, notary or commissioner on the request of either party and at his expense. Said stenographer shall be sworn by the justice, notary or commissioner to transcribe faithfully the testimony, and his transcript shall be certified by the justice, notary or commissioner. In case such request is not made the deposition shall be written by the justice, notary or commissioner or by a disinterested person, in the presence and under the direction of the justice, notary or commissioner. The examination or the stenographer's transcript thereof shall be carefully read to or by the party examined and then subscribed by him.

SECTION 6. The examination shall be delivered by the justice, notary or commissioner to the court, before which the cause is pending, or shall be enclosed and sealed by him and directed to it, and shall remain sealed until opened by it. Copies of the deposition, however, may be furnished by the justice, notary or commissioner to any party.

SECTION 7. Nothing in this act contained shall prevent either party calling and examining, at the trial of the action, any party in the same manner as though his testimony had not been taken in writing.

SECTION 8. If a party after due notice fails without reasonable cause to attend and submit himself to examination under this act, the court may make and enter such order, judgment or decree as

justice requires, and the court shall have at all times full control of the examination, and may make all proper orders relating thereto.

SECTION 9. No one without leave of court shall both examine any other party orally under this act and interrogate him in writing under General Laws, chapter two hundred and thirty-one, sections sixty-one to sixty-seven, and no party shall be required to attend and submit himself to examination more than once in the same case except by order of court.

SECTION 10. This act shall take effect on nineteen hundred and thirty.

Explanatory Note.

This act is drawn to apply only to residents of the Commonwealth. It may be well to extend it to nonresidents with proper safeguards to prevent abuse, but they may now be examined by deposition under General Laws, chapter 233, sections 39 to 44.

PROCEDURE TO EXPEDITE THE BRINGING OF SUITS.

Much discussion of legal procedure is based on the assumption that the plaintiff should have a monopoly of the initiative in litigation, so that he may take his own time about formulating his claim and beginning an action upon it within certain statutory limitations of an arbitrary character, such as the six-year statute of limitations on actions in general, or the one-year special statute of limitations on claims for personal injuries caused by automobiles as provided in our present motor vehicle insurance law. We believe the defendant should also be given the initiative.

While, in some cases of serious injuries or obvious injuries the extent of which it may take some time to ascertain, a year within which to bring suit may be reasonable, we believe that the interests of justice do not require so long a period in most cases. Six months is the time allowed in the Workmen's Compensation Act (G. L., c. 152, § 41). We see no reason why a person who has been in an accident and against whom claims may be presented should be left in uncertainty for a year as to whether he is to be sued or not, or why the insurance company should be left in similar uncertainty as to the number and character of claims which may be presented

to it when the amount and character of those claims and the evidence in regard to them directly affects the insurance rates which the motor vehicle owners of the state have to pay. We think the defendants and the companies should be given an additional opportunity to find out as soon as possible after the accident what happened and what the claims are. Accordingly we recommend an act by which the defendant, or the representative of the insurance companies on behalf of the defendant, may, if they deem it advisable at any time after the accident happens, apply to the court, stating the accident, the names and addresses so far as known of the persons involved as owners or occupants of the car or cars, or of any pedestrian who may have been injured, and requesting the court to fix some reasonable date *within* the period of a year, before which date any person involved must begin his action or be barred, and that notice of such order shall be forthwith served by registered mail, with return receipt requested, upon the persons therein named. Of course, for cause shown, such as the fact that a person involved may have been so severely injured that he is in the hospital and unable to present the claim, the court would have discretion to extend the time as to that claimant. But the existence of such machinery for accelerating the bringing of suits, and of machinery for oral examination of parties and witnesses after suit was brought, would, in our opinion, be a most effective remedy for checking, in the interest of the rate-paying public, such undesirable practices already described as may now exist.

We see no reason why any honest claimant should suffer, or be prejudiced, by the provision for such oral opportunities of telling his story. We believe that these remedies would prove most effective in the interest of justice and in checking abuses, delays and great public expense, which are matters of serious current complaint in connection with our present motor vehicle insurance law. There is nothing new about this idea. Such orders as we suggest are issued in receiverships.

We do not consider it advisable to delay the filing of this report in order to prepare a draft act to carry out this recommendation.

Discussion of the Proposed State Fund Method of dealing with "Fake" Claims.

In the proposed bills for a State insurance fund submitted to the Commission under the resolve, and also in the bill filed with the Secretary of the Commonwealth as an initiative bill, the method of dealing with "fake" claims is the usual American method of settling every problem, namely, creating a new crime by statute.[1]

We do not believe this is the way to go about it. We have so many crimes on the statute books now that the administration of the criminal law is weakened by its own weight and by the increasing difficulties of prosecuting officers in deciding which laws to enforce and when. The criminal penalty method of checking "fake" claims among the thousands of claims presented would in our opinion be a mere dramatic gesture at the wrong end of the problem. What is needed under any system is effective machinery for checking the abuse at its source, for puncturing the bubble, for finding out as soon after the accident and as accurately as is reasonably possible what actually happened.

While an injured person has a constitutional right to a jury trial if he sues for damages at common law, he has no constitutional right to any particular form of security for the payment of those damages, and there-

[1] The proposed section 34F of the State fund bill submitted with the initiative petition is as follows:

"Section 34F. Whoever in connection with any claim for damages, for death or personal injuries against any person insured by the fund, makes or presents, or acts or aids in making or presenting to the fund, or to any of its commissioners, or agents, any wilfully false statement in respect to any material fact or thing pertaining to such a claim with intent to deceive or defraud the fund, or any of its commissioners or agents, shall be punished by a fine of not less than one-hundred nor more than one thousand dollars, or by imprisonment for not less than one month, nor more than one year. Whoever obtains any money from the fund by means of any such statement shall be punished by imprisonment for not less than one month nor more than two and one half years. If it appears to the commissioners of the fund or to any of them that any person has violated this section, they or he shall forthwith report the facts in writing to the attorney general, or to the proper district attorney, who shall cause the offender to be prosecuted therefor."

fore the Legislature may regulate the security and the method of reaching it.

The fact that the Commonwealth has adopted the policy of requiring insurance as a condition of using motor vehicles on the highways for the protection of the public seems to us to impose the obligation upon the Commonwealth to exercise to the full, within constitutional limits, its power of providing reasonable means of every kind for sifting claims, the making of which is invited by the statutory requirement of insurance. That requirement, however desirable, has produced a condition which existing methods of judicial procedure cannot cope with. New procedural machinery is just as necessary, therefore, as it would be in a manufacturing establishment which was faced with some new problem of production.

In our opinion these automobile damage cases constitute a class apart from all other litigation, and the insurance law attaches a direct public interest to what would otherwise be private litigation. Because of this direct interest of the public in these cases every reasonable expedient for bringing out the actual facts promptly without regard to traditional procedure, but subject to the judicial discretion of the court, should be experimented with in order to protect the careful drivers in Chelsea, Revere and elsewhere in the state from rates based on unwarranted claims and settlements.

EXAMINATION OF CLAIMANT BY AN IMPARTIAL PHYSICIAN SELECTED BY THE COURT.

We also believe it should be a condition of the right to collect from an insurance company a judgment for personal injuries caused by the operation, etc., of a motor vehicle, that the plaintiff should submit, if directed by the court, to an examination by an impartial physician appointed by the court, whose written report should be filed in court and be admissible in evidence, each party being entitled to a copy, and that if a medical

question is in dispute in the case the court should have authority to appoint an impartial physician to testify to his opinion upon the question.

From the opinion of Chief Justice Holmes, in Stack *v.* New York, etc. R.R., 177 Mass. 155, it seems that the Legislature has the power to require such physical examination in any personal injury case, regardless of the question of statutory security for payment of a judgment. Obviously, therefore, the Legislature may require such impartial medical evidence as a condition of reaching the security to which the plaintiff has no right except that given him by statute. We believe this legislative power should be exercised in order to check "fake" or exaggerated claims, and also to check such objectional practices as may be resorted to by some members of the medical profession in connection with such claims.

Draft of an Act for Examination by an Impartial Physician.

Any court in which an action is now pending, or is hereafter brought for personal injuries caused by the operation, etc., of a motor vehicle since January first, nineteen hundred and twenty-seven, may at the request of either party or of the insurer, if there be one, or of its own motion appoint a duly qualified impartial physician to examine the injured person and to report to the court. The fee for this service shall be —— dollars and traveling expenses, but the court may allow additional reasonable amounts in proper cases, and the cost of such examination shall be paid in the first instance by the party applying therefor, or, if the examination is ordered by the court, by the party directed by the court to pay the same, or, if no such order is made, by the insurer, if there be one, and said amount shall be included in the costs of the prevailing party in the action if it has been paid by him, or in the costs of the defendant if it has been paid by the insurer. The report of the physician shall be filed in court, if practicable, in triplicate, or if only one copy is filed copies shall be made at the expense of the party paying for the examination, and each party furnished with a copy by the clerk. The report shall be admissible as evidence in the case or in any other civil case involving the same injury.

Whenever a medical question is in dispute in any such case requiring testimony other than that contained in such report the court may in the same manner appoint an impartial physician to testify in regard to such question.

If any plaintiff claiming personal injuries in any such action refuses or fails without sufficient cause to submit within a reasonable time upon reasonable notice to the examination above provided for in accordance with the order of court, he shall have no right to proceed against the insurer for the collection of any judgment which he may recover against the defendant in such action.

Reports to the Registry and Hospital Records should be made available.

The same public interest seems to us to require not only that the copies of the report of an accident made by the car owners or drivers to the Registrar, but also copies of the hospital records of an injured person, should be available to the parties on payment of a fee for the copy. Under the Connecticut practice any one interested can obtain a photostatic copy of the detailed report of an accident which is made to the Department of Motor Vehicles. We think the car owners who pay for injuries in their rates are entitled to have the insurance companies know what hospitals an injured person has been to, and what those hospital records show before the companies settle cases. If the consent of the claimant is needed to authorize hospitals to furnish these records that consent should be made a condition of the right against the insurance.

THE MISUSE OF CRIMINAL PROCEEDINGS.

The Commission is informed that there is a growing practice on the part of claimants or their representatives of instigating or supporting criminal proceedings for some violation of the motor vehicle law or traffic regulations, not for the purpose of protecting the public, but for the purpose of securing a criminal record which may be subsequently used in a civil suit growing out of the same facts, in order to discredit the testimony of the defendant. We do not think the criminal courts should be used for this purpose. They have enough to do without making them pawns in the chess game of personal injury litigation.

We recommend the following:

DRAFT ACT TO PREVENT ABUSE OF CRIMINAL PROCEDURE.

Section twenty-one of chapter two hundred thirty-three of the General Laws is hereby amended by adding at the end thereof the following clause: —

Fourth. The record of his conviction of violation of the motor vehicle law or of any traffic regulation shall not be shown for such purpose in any civil action growing out of the same accident which led to such conviction.

We think there is also a strong argument in favor of going further and providing that no conviction of the motor vehicle law or an ordinance not involving "moral turpitude" shall be shown to affect the credibility of a witness. Everybody knows that there are plenty of honest persons convicted of motor vehicle or other violations, and that such convictions do not really affect their credibility as witnesses. It seems to us that much of this artificial test of veracity should be discarded as calculated to defeat justice in these days of multitudinous "crimes," and that at least the court should be given a judicial discretion as to the kind of conviction the record of which shall be admitted "to affect" the "credibility" of a witness.

PROPERTY DAMAGE.

The Judicial Council suggested the extension of our present law to require insurance against property damage. The opinions of experienced men differ so much on this question, however, that we are not satisfied that it is advisable to extend the law to property damage *at this time*. We think it would be wiser to try the measures for sifting claims which we recommend before that step is further considered. (See further discussion under "demerit rating.")

THE STATUTE OF LIMITATIONS.

By an obvious oversight the period of limitations on actions for property damage was left at six years when that on actions for injuries or death was shortened to one

year. The one-year limitation should be applied to property damage cases for obvious reasons.

Signed Statements.

We also believe it should be made a condition of settlement or recovery for any amount within the required insurance limits of the present law that the claimant for personal injuries should present a signed statement of claim, the form of such statement to be substantially as may be prescribed by the Commissioner (or the Rating and Control Board). Declarations in actions for such injuries could be sufficient if they follow such form.

Other Suggestions.

We also call attention to the following suggestions which have been made but which we have not had time to consider in detail.

Defaults on Interrogatories. — Amend interrogatory statute so that no default shall be entered for failure to file answers if the insurer makes affidavit that it seasonably notified defendant of the filing of interrogatories and that defendant refused or neglects to answer, and the insurer offers to file such answers, or to admit such material facts, as it can. If, notwithstanding such offer, plaintiff insists upon default, he should have no right to reach the insurance money.

Insurer's Address. — Require every insurer to file with the Registrar of Motor Vehicles an address within the Commonwealth to which all notices regarding claims against it and all notices required after suit is brought may be sent.

Trial. — Provide that no action shall be marked for trial in district or municipal courts unless and until all other actions arising out of the same accident are so marked. Require plaintiff to notify insurer seasonably before marking such cases so that insurer can within a time limited notify the clerk of the names of all other actions involving the same accident.

Passengers. — Provide that in suit by passenger, the negligence, if shown, of the driver shall be imputed to the passenger unless it affirmatively appears that such passenger had taken all reasonably possible steps to protect his own safety.

Guests. — Provide, as in the Connecticut statute, that a guest must show wanton or reckless misconduct of the driver of the vehicle in which the plaintiff was riding.

Settlements. — Provide that any settlements by the insurer (in the name of the defendant) of any claim or suit shall not be admissible in evidence, in any other suit involving the same accident (either as an admission of liability or to affect credibility, or otherwise).

Tender of Damages without Admitting Liability. — We have had for many years a statute (G. L., c. 231, §§ 74–75) providing that the defendant in an action at law may make an offer of judgment for a specified amount. If the plaintiff does not accept such offer before trial, and at the trial does not recover as damages an amount larger than the amount so offered by the defendant, the plaintiff shall have his costs only to the date of the offer and the defendant shall have a judgment for costs after such date.

We think that this statute might be made more effective by providing for a "tender of damages in tort without admitting liability;" and that, if the plaintiff does not accept the tender and does not recover an amount larger than that tendered after putting the defendant and the public to the cost of a trial, triple costs shall be taxed against the plaintiff and deducted from the amount recovered; and that said costs may be deducted by the defendant from the amount of the judgment and one-half thereof paid to the clerk of the court for the benefit of the county and the other half retained by the defendant.

There is nothing new to our practice about this sort of plan. The Supreme Judicial Court imposes increased costs in case of frivolous appeals (see G. L., c. 211, § 10).

DISCUSSION OF THE RECOMMENDATIONS OF THE JUDICIAL COUNCIL.

By the terms of the resolve creating this Commission we were directed to consider and report on all the recommendations in the Fourth Report of the Judicial Council relating to the problem of congestion in the courts resulting from motor vehicle litigation.

Discussion of The Proposal to Restrict the Right to Reach Insurance to Plaintiffs in District Court Actions.

The first recommendation to provide for more prompt and inexpensive trials appears in a draft act on page 17 of the fourth report. The first section has been rendered unnecessary by St. 1929, chapter 316, removing the jurisdictional limits of the District Courts. The second and third sections would limit the right of the injured person to proceed against the insurance company to collect a judgment within the required amounts of insurance if not paid within thirty days, to cases begun in the District Courts. The council explained this plan on pages 15 to 18 of their fourth report, and stated —

> Under this plan we believe a considerable number of the personal injury suits now brought in the Superior Court would be brought in the District Court in order to get the benefit of the security and a prompt hearing, and, as defendants in many cases do not care for jury trials because of uncertainties and expense, we believe few of them would be removed from the District Courts by the defendants. By using this procedure we believe honest plaintiffs would get fair compensation more promptly and with less cost for lawyers' fees and expenses than under the present procedure.

The effect of this bill would be to limit the required insurance policy to liability in actions begun in the district court. Objection doubtless would be raised that this would leave a car owner unprotected by insurance against actions brought against him in the Superior Court unless he took out additional coverage. This is true, but it is suggested that this would be one of the

advantages of the act, because malingering claimants and their lawyers would not know whether or not a car owner has insurance against actions in the Superior Court. Therefore he would be more likely to sue in the court which is less expensive, and would thus reduce the congestion in the Superior Court.

One of the serious defects of the present law is that it announces to all claimants that there is an insurance against actions in which he can claim a jury, and thus invites him to do so. This act would withdraw this announcement and invitation without in the slightest degree affecting his right to jury trial. But the act would not be effective for this purpose unless the insurance act were extended to property damage — a step which the Judicial Council recommended but which, as already explained, we are not ready to recommend *at this time*. We also think there is danger of swamping the district courts.

We think the other experiments which we recommend are more advisable at this time.

District Court Judges in the Superior Court.

The second recommendation of the Judicial Council was "A Plan to Designate Certain Justices and Special Justices of District Courts to Try Motor Vehicle Civil Cases with Juries in the Superior Court."

This was a proposal that the Chief Justice of Massachusetts should be authorized to designate fifteen justices or special justices of the District Courts, from which number the Chief Justice of the Superior Court should be authorized to assign one or more as needed to sit in the Superior Court with or without juries to try such motor vehicle accident cases as were brought in or removed to the Superior Court.

The calling of justices of the District Courts to sit with juries on the criminal side of the Superior Court in misdemeanor cases has been a marked success in breaking the congestion in the criminal docket. The Judicial Council has repeatedly said it is vital to the interests of

administering justice that this practice should be continued. The present law limits this practice to the regular justices of the District Courts, who may be selected by the Chief Justice of the Superior Court.

When it comes to the use of justices or special justices on civil cases in the Superior Court, we meet another aspect of the problem. While the practice on the criminal side of the Superior Court has been justified by its effectiveness, it has to some extent interfered with the regular work of the District Courts in some districts. For this reason, some of the District Court judges who have been called hitherto have requested that they be relieved from further service in order that they might attend more regularly to the work of their own courts. If the practice were to be extended to the civil side, particularly to the use of the regular judges of the District Courts, it might cause more serious interference with the work of those courts. The regular justice is the administrative head of his local court, and with the constantly increasing jurisdiction conferred upon him it is important that he should be on hand to attend to it, particularly in the larger districts where the court is busy.

If the various measures which we have recommended to speed up the machinery of sifting these motor vehicle cases should be adopted and should prove effective, as we believe they would, in reducing congestion in the Superior Court, there would probably be less need in future of increasing the judicial force on the Superior Court by calling in District Court judges; on the other hand, as shown by the figures in Appendix C, there is already a large and growing accumulation of untried cases on the dockets of the Superior Court which cannot be reached for two, three or more years with the existing number of Superior Court judges. If, as a temporary measure, the Chief Justice of Massachusetts were authorized to designate fifteen special justices of the District Courts to be used for the trial of motor vehicle cases on the civil side for a period of three or five years, we feel that the existing congestion in the Superior Court might

be disposed of with the least possible interference with the work of the District Courts, and with much less expense to the public and less complication of the problems of the future than would result by increasing the number of permanent judges of the Superior Court. Among the 140 special justices of the District Courts there are a sufficient number who are competent to try these motor vehicle cases.

As to the objection that there is no court room space to accommodate extra sessions in certain counties, the Judicial Council said —

> It can only apply in a few counties, for many of our court houses are idle, in whole or in part, much of the time. The sittings of District Court judges with juries could be assigned to take place when the Superior Court judges were not there. As to the counties that have not court room space enough, it seems a fair answer to say that in whatever form these cases are disposed of, whether by court or commission, rooms will have to be found for the necessary hearings. If rooms are lacking for doing suitably the work of any court, more should be provided by hiring court room space if necessary. If the sessions were carefully distributed throughout the year, we have in most counties, at least, ample court rooms, court officers, clerks, libraries, records, all, in fact, that is needed except the judges.

Accordingly, we recommend as a temporary measure the following act:

DRAFT ACT AS TO SPECIAL JUSTICES SITTING IN SUPERIOR COURT ON CIVIL MOTOR VEHICLE CASES.

SECTION 1. Chapter of the General Laws is hereby amended by inserting after section the following new section: —

Section A. A special justice of a district court, except the municipal court of the city of Boston, *if designated by the chief justice of the supreme judicial court,* shall at the written request of the chief justice of the superior court sit in the superior court at the trial or disposition with or without a jury in any part of the commonwealth of any action arising out of a motor vehicle accident, and during the continuance of such request shall have and exercise all the powers and duties which a justice of the superior court has, and may exercise in the trial and disposition of such cases; provided, that no special justice so sitting shall act in a case in which he has held an inquest in the district court or otherwise has an interest.

SECTION 2. Sections two and three of chapter four hundred and sixty-nine of the acts of nineteen hundred and twenty-three are hereby incorporated by reference to this act.

SECTION 3. [This section should provide reasonably adequate compensation for such special justices while they are sitting.]

The next recommendation of the Judicial Council was for procedure to encourage prompt, informal trials in the Superior Court. This recommendation was adopted by St. 1929, chapter 173.

The next recommendation was for increased entry fees in the Superior Court. We have already discussed this subject, and have recommended graduated entry fees in accordance with the amounts claimed in the *ad damnum* of the writ, for reasons which we have already explained.

THE SUGGESTION OF A JURY FEE.

The next suggestion was for a jury fee. As to this, the members of the Council were divided in opinion, and simply called attention to it "as a possible plan in case it meets with support in public sentiment in the community." Jury fees are required in a number of states, such as New York, Illinois, California and others.

A fee was required in Massachusetts from 1805 to 1836, under St. 1805, c. 63, § 1 (January Session, c. 37), which provided that —

> . . . there shall be paid to the clerks of said courts respectively, by the plaintiff or appellant, the sum of seven dollars for the trial of each civil action, for the use of the county.

A jury of twelve men in 1805 received $1.25 each, or a total of $15 for the whole jury for a day; today the daily expense for a jury of twelve is $72, not to speak of the cost of additional jurors in attendance already referred to at $6 each. It should be remembered here that the cost of a jury trial, including overhead, is estimated at about $500 a day, or more than $1 a minute.

It seems to us that a jury fee of $15 or $25 would be a perfectly reasonable requirement in view of all this enormous public expense which is caused by a jury claim.

But as we have already recommended a plan for graduated entry fees and other changes, we merely call attention to this jury fee as a possible plan in case it meets with the support of public sentiment without making specific recommendation in regard to it at the present time.

Summary Procedure to revise Excessive Fees.

The next subject discussed by the Judicial Council was "Unprofessional Practices in Connection with Motor Vehicle Accident Litigation." We have already discussed this subject and made a number of recommendations which seem to us essential experiments if any real attempt is to be made to check the so-called "fake" or exaggerated claims. As to the practice of contingent fees and the commonly reported 50–50 division of the proceeds between the client and the lawyer, or some other large percentage for the lawyer, with possible additional payments for medical men and others, the Judicial Council suggested in its fourth report, page 29, that "provision be made by appropriate rules in the Superior Court and in the District Courts for affording clients as far as possible summary relief against excessive or illegal charges, whether for services or expenses, and furnishing procedure for the prompt enforcement of rights under G. L., c. 221, § 51." That section provides as follows:

> Section 51. An attorney at law who unreasonably neglects to pay over money collected by him for and in behalf of a client, when demanded by the client, shall forfeit to such client five times the lawful interest of the money from the time of the demand.

We approve of this suggestion. As long as the practice of contingent fees continues, we see no way of checking the abuse of the practice and protecting clients from injustice except a summary proceeding, the nature of which is called to the attention of the clients in some way, as by a posted notice, by which the clients may ask the court directly to make the attorney account as an officer of the court. There seems to be no reason why the

court cannot supervise such charges as is done in the Probate Courts from time to time and in the Industrial Accident Board. If it were known that the court would receive and hear some of these complaints in personal injury cases, we believe the abuses would be materially checked.

In these suggestions, as in all the other suggestions that we make, we believe that motor car owners who complain of insurance rates have a direct interest in the practice and procedure in every motor vehicle case presented to the court. We believe that from their point of view all the experiments which we recommend are worth trying, and that nobody can say they will not be effective until they have been tried.

Petty Motor Vehicle Offences.

The recommendation of the Judicial Council in regard to reducing the number of petty motor vehicle offences which are brought into court and eliminating from them the criminal stigma was referred to the Department of Public Works for further consideration by Resolves of 1929, chapter 45. That department has recently reported a bill on this subject (Senate No. 5). We heartily approve of the purpose and substance of this bill. We believe that it will not only reduce the congestion in the courts, and keep police officers on their beats where they are of more service than they are in hanging about a court room on petty offences, but we also believe that it will prevent the injustice of a criminal stigma upon many of our law-abiding citizens who inadvertently or carelessly violate some minor regulation, but who are not in any sense persistent violators.

The Suggestion of an Automobile Commission for Automobile Cases.

It was suggested by various persons before this commission that we should have either a separate system of traffic courts or some administrative commission, similar

to the Industrial Accident Board, to hear and decide automobile cases. The legislature has been against this. The Judicial Council and the Judicature Commission before it have opposed thus far the policy of creating additional boards outside of the courts for dealing with such cases or of creating additional special courts for that purpose. They expressed their opinion that the machinery of court procedure and practice should be so adjusted to modern conditions that the hearing and decision of cases should, as far as practicable, be conducted within the existing judicial tribunals with the assistance of the bar when needed; and that judges and lawyers should adjust themselves to such modern needs and learn to conduct the business of the courts more promptly than is done at present in most cases.

In the course of this report we have suggested a number of changes in the machinery to bring about the more prompt disposition of these automobile claims when there is any real occasion for hearing.

The Judicial Council pointed out with emphasis that, unless the bar and the bench co-operated to bring about a more prompt method of doing business in the courts, the public, which is hearing more and more about arbitration and commissions than ever before, will in the near future lift personal injury cases out of the hands of the courts and the bar as they lifted the whole industrial accident business some years ago. We agree with the view thus expressed by the Judicial Council. Most of the members of this Commission are not lawyers. Accordingly, they may be supposed to reflect the views of those in the community who are not lawyers. The members of this Commission, even including the lawyers, are unanimous in believing that the public will not accept indefinitely the idea that the interests of justice require so much delay and expense in order to settle these cases, many of which, as shown by the figures, involve relatively small amounts, and the proceeds of which must yield still smaller amounts to injured persons if they are really injured.

We believe, however, that it must be possible to invent

machinery by which the facts in most of these cases can be ascertained more quickly with our present system of courts without the enormous accumulation of cases in which the expensive method of jury trial is demanded, not, apparently, for the purpose of really securing a jury trial, but, in many cases, as a sort of "club in a horse trade" with a view to forcing settlement as an alternative to delay and expense of a jury trial. Accordingly, they recommend the changes and procedure already referred to.

We do not advise a commission plan. It would be a drastic method of dealing with the problem. But we mention it in order that the bar and the community may visualize the sort of thing which we believe is looming up in the future unless Massachusetts revises its court procedure and practice and the habits of the bar in such a way as to produce more satisfactory results than are now produced.

Schemes for Compensation Regardless of Negligence.

One of the state fund bills referred to this Commission (Senate No. 26 of 1929 on petition of Armand C. Bang) is drawn with this compensation scheme in view. The Judicial Council, in its fourth report, pages 30 to 37 (referred to this Commission for consideration), discusses several varieties of compensation and commission plans, and points out some of the difficulties, complexities and constitutional problems involved in them. We call special attention to that discussion of those plans without repeating it. We have already discussed the commission idea to some extent in this report. That the compensation scheme is still largely in the air is indicated by the information as to the progress of the study of the committee created under the Council of Research of Columbia University.[1]

On inquiry of the secretary of that committee we have received the following information as to the material which they have gathered and their lines of inquiry:

[1] Since this report went to the printer an article on the work of the Committee, by its chairman, Arthur A. Ballantine, Esq., has appeared in the American Bar Association Journal for February, 1930, p. 97.

As to foreign laws: Dr. Francis Deak of Columbia is writing a report for the committee, having gathered material in Europe last summer. It appears that in Denmark, Finland, Norway and parts of Switzerland there are laws requiring liability insurance. Europe has an international code which requires liability insurance with regard to air traffic, and imposes liability regardless of fault. In Germany a voluntary committee is investigating the motor vehicle problem, and will consider compulsory compensation. In Great Britain the Royal Commission on Transport reported last July in favor of compulsory liability insurance.

As to compulsory compensation: The three chief problems are: (1) what should the plan cover, (2) how much would it cost, and (3) can the constitutional difficulties be overcome.

1. Should the plan include only motor vehicles registered in the state? Should it include those owned by a state or by a municipality? Should it include unidentified and stolen cars? (This could perhaps be effected by borrowing from the New York Workmen's Compensation Act the idea of creating a fund by payments in respect of every death where the deceased has no dependents.) Should property damage be included? Should personal injuries to the owner of the car be included? Should all injuries be included or only those causing a prescribed duration of disability? Should accidents out of the state be included? Exactly where should the line be drawn as to what constitutes a motor vehicle accident, — *e. g.*, must the motor vehicle be in motion?

2. As to cost: As you know, published accident statistics do not give sufficient data for estimating the cost of a compulsory compensation plan. We have not yet got complete information from the insurance companies. The workmen's compensation records give excellent data with respect to men of working age employed in connection with motor vehicles. There are, however, very few available data as to the rest of the public showing how much they are hurt in accidents and how long they are disabled. I believe that the only way to get these items will be by individual studies of a great many cases.

3. As to constitutional problems: The fundamental constitutional problem arises under the due process clause. Can a state take away the common-law rights of a plaintiff and the common-law defences of a defendant by substituting a new remedy and a new basis of liability? Can a compensation plan be made compulsory, or must it be elective? How will it be affected by the commerce clause and by the provisions of state constitutions as to trial by jury?

The fact that this study is being conducted as the result of the court congestion and the investigation of the activities of the bar in these other states is another

illustration of the sort of thing which is looming up in the near future unless more effective and expeditious methods can be thought out and provided for dealing with these cases in the courts, *where we believe they belong.*

While it has been impossible in the limited time for the Commission to examine the material accumulated and to study all the problems suggested by the Judicial Council and the secretary of the Research Commission, we have certain definite views in regard to the plan of compensation regardless of negligence.

We think there is a marked difference between the relation of the risks of a business as between employer and employee and the risks of the public highways as between the motoring public and the injured persons. Employers as units of responsibility for care-taking to prevent accidents under a system of voluntary insurance are very different from the multitude of car owners on the highways.

We believe the elimination of negligence on the highway as the basis of liability would be a mistake, because it would not only, in our opinion, encourage unwarranted claims, but would also encourage carelessness, or at least would not discourage carelessness. We also believe that insurance costs, under our present system, already claimed by some to be too high, would appear small as compared to the probable costs under a system of compensation regardless of negligence. It is a very common opinion among insurance men and others today, which certainly has some apparent support in experience, that the fact that a person's car is insured, so that he will not have to pay the loss in case of accident, tends to make some persons drive more recklessly, just as it makes other persons leave the insurance company to find out the facts without assistance, and even sometimes without notice of the accident, because they feel relieved of all responsibility by the fact of insurance.

We have already stated our belief that safety measures are the surest form of preventing accidents, and we believe the sense of responsibility for negligence is very

important as a safety measure. Accordingly, we believe that the changes in judicial machinery which we recommend should be tried in the courts, so that we may see what the effect is before we begin to remove negligence as a basis of liability or send any more judicial work to administrative commissions. We must try experiments with court procedure or we will get nowhere. Modern life demands it. The comparative lack of such experiments in the past is, in our opinion, one of the main causes of our present difficulties.

General Considerations.

At the risk of repetition we again emphasize the fact that all these suggestions are made to carry out the real purpose of the present law which is to provide indemnity as promptly as possible for honest persons who are injured on the highways without fault on their part *and to avoid unnecessarily high insurance rates.* In order to do that something must be done to break the opportunities of the so-called "fake" claimant and his doctor and his lawyer and all the intermediaries. Criminal penalties and disciplinary investigations will not do it. Their effect is apt to be temporary. Life is too short to be investigating everybody about everything all the time. That system does not work. "Fakes" have always thrived on the ignorance of the "faked" and their difficulties in discovering the "fake." The way to meet them is by reasonable and adequate machinery for getting the real facts as promptly as possible and thus deprive them of their foothold. Some lawyers and doctors may protest, and question the existence of the practices which we have referred to. But there are too many indications within the experience of too many people, that such practices do exist to an extent the limits of which it is impossible to determine, to warrant us in ignoring them. Of course it may be very difficult to prove any particular instance of such practices, and for this reason many persons, particularly at public hearings, are very cautious about making statements. On the other hand,

there are probably very few members of the bar of any experience, or laymen who have had any particular experience in automobile accidents, who do not believe that such practices exist. Certainly the representatives from Chelsea and elsewhere seemed to believe that there was a considerable amount of exaggeration in claims made and charged against the rates for that zone. Casual inquiry by any reader of this report among his acquaintances who have been concerned in some automobile collision of greater or less seriousness will probably reflect the pretty common impression among laymen that some of the bar and the medical profession are engaged in proceedings which seem distinctly peculiar.

If the machinery which we suggest is tried we shall probably find out within a year or two how far the "fake" claim business really affects the rates that we pay. We shall never know unless we do try some such machinery for sifting cases.

It seems to us far better for the public to require the parties and their lawyers in motor vehicle liability insurance litigation to stop fighting in the dark at the expense of the public on their conception of what is known as "the sporting theory of justice," and to conduct their cases more openly with every reasonable facility of getting the cards on the table.

THE ADMISSION OF UNFIT MEMBERS OF THE BAR AND THE PROBLEM OF WEEDING THEM OUT.

It is easy and natural in reports or in conversation to dispose of the problem of unprofessional activities of lawyers by saying that they are a "disgrace to the bar," that the "bar should do its own housecleaning," that it is the duty of "bar associations," and that if they do not or cannot improve matters no one else can, etc. Most of us are apt to dispose of the problem in that way, with perhaps various abusive epithets or comments thrown in to relieve our feelings, and perhaps, also, to relieve ourselves from thinking more clearly about the facts. But there is another side to the picture, and we think it

probable that lawyers in general behave themselves about as well as any group of equal numbers in the community. There are some twenty or more "bar associations" in the Commonwealth, most of them county or city associations. Their funds are not sufficient to support extended "investigations" such as that conducted in New York, which cost some $15,000 or more in addition to all the volunteer services which were rendered. The oldest and in disciplinary work the most active association is the Bar Association of the city of Boston, which in addition to its other professional activities has a grievance committee with a secretary who is paid several thousand dollars a year. This committee deals with about five hundred complaints each year, and we believe the work is increasing. The Middlesex County Association also handles many complaints. The Massachusetts Bar Association and some of the other associations deal with varying numbers of complaints outside of Suffolk and Middlesex counties. While no one contends that the disciplinary work is done as effectively as it might be by some highly organized bodies with more money for employing assistants, it should be realized that there has been and is a great deal of public spirited, unpaid and unpleasant but effective service rendered by members of these grievance committees. They try to be both fair and effective, but the difficulty of the problem of maintaining professional standards which is created for them by the Legislature should be more generally understood. As already pointed out, under the present law as to admission the Commonwealth adds about 500 new lawyers to the "bar" every year, and having thus put them into the bar it expects the "bar associations" to weed out the unfit. We are continually admitting at one end of the line what we want put out at the other end. In order to be fair, each complaint against a lawyer has to be carefully examined, and before a disbarment proceeding is begun at the expense of the county there must be sufficient evidence to support the proceeding with some chance of convincing the court. County

commissioners naturally would not care to pay for many unsuccessful proceedings begun by unofficial bodies.

The letter of Chief Justice Bolster, already quoted, indicates a condition which suggests the advisability of more effective tests of admission so that the supply of the unfit may be checked before they are admitted, instead of admitting them and then expecting "bar associations" to perform the impossible task of weeding them all out afterwards. The ultimate cost of the present system of admission to the bar is paid very largely by many poor persons who become the prey of the unfit, as is well known to grievance committees and legal aid societies; and also very largely by the taxpayers of the Commonwealth, whose courts are clogged with cases that should never be begun; and by the motor vehicle owners, who pay in their insurance rates increased losses stimulated by the unfit. This whole problem of admission to the bar has been before the Legislature for some years. We believe it has a more direct bearing on court congestion and insurance rates than is generally realized, and that this fact furnishes an additional reason for its careful consideration by the Legislature. We believe that this is of more importance than general investigations of the bar, even if such investigations were practicable and advisable.

Members of the bar are now admitted by the Supreme Judicial Court on behalf of the Commonwealth and not by county courts. When so admitted, they may practise all over the Commonwealth, and citizens throughout the Commonwealth take the consequences of such practice, whatever it may be. It is nobody's official business, however, to do anything about getting them out after they are once admitted. Unless bar association committees voluntarily take up this disagreeable task as a professional duty, it will not be done at all. The business of keeping unfit persons out seems as important a function of the Commonwealth as the business of getting fit persons in. There seems to be no particular reason why the Commonwealth should admit so easily and then expect bar associations to do all the work and bear much

of the expense of investigating complaints, and require the counties to bear the expense of proceedings for excluding. The state requires every car owner to contribute, at least, $3 each year for the privilege of keeping his car on the road, and each driver is required to pay $2 for a license to operate a car. These fees help to pay the cost of the Registry of Motor Vehicles, etc. Should not the 8,000 lawyers each be required to pay something annually toward the cost of an adequate system of admission and of keeping the unfit off the roads of practice? It seems to this Commission, composed mainly of laymen, that the Commonwealth might well devise more effective methods of testing men before admission and also assume the cost of disbarment proceedings now paid by the counties. There is nothing new about this suggestion. Such a fee is paid by all lawyers in the state of Washington, and in a different form in California, Alabama and several other states. If the legal profession is so attractive to so many persons, and at the same time offers so many opportunities for the unfit to abuse their privileges that expensive proceedings are necessary to discipline them, should not the expense of a more effective system of sifting men be partly distributed to the bar as a whole, just as part of the expense of motor vehicle control is distributed to car owners and drivers?

Should there be a General Investigation of Accident Litigation?

As to the practicability or advisability of such an investigation of accident litigation as was conducted in New York by the direction and supervision of the court, and with the consequent power to summon witnesses, it is not for us to express an opinion except so far as it has a bearing on the problem before us of motor vehicle insurance and the intimately related problem of congestion of the courts. Such an investigation would doubtless be fought at every step, the jurisdiction of the court challenged, as it was in New York, etc. If it were undertaken by the state, special counsel would have to be

engaged, as the Attorney General's department has enough to do and is not equipped for such an investigation. It might have some temporary deterrent effect on the activities of some of the unfit in accident cases, and might result in some proceedings for disbarment if vigorously conducted, but we do not think it would have much permanent effect unless it led to changes in judicial machinery and procedure calculated to check the abuses. And for the purpose of considering such changes we believe we know now substantially all that is needed, and all that could be learned from such an investigation, to guide the Legislature in considering such changes in connection with accident cases. We have the benefit of the picture disclosed by the investigations in other cities which is printed in Appendix D. We know as a matter of common sense, as well as common report, that more or less of the same sort of thing is undoubtedly going on in this Commonwealth even though it might be difficult to get the evidence to prove it in individual instances. We think we have shown enough in this report to warrant the Commonwealth in taking such effective precautionary measures as wise individuals in the conduct of their own affairs would take to guard against impostors, and we submit this conclusion for the consideration of the Legislature and the public.

THE INITIATIVE "FUND" BILL (HOUSE No. 202) AS EXPLAINED BY THE SUPREME JUDICIAL COURT.

While this report was in preparation, on January 9, 1930, the opinion was handed down by the Supreme Judicial Court, in the cases of Horton *v.* the Secretary of the Commonwealth and Horton *v.* the Attorney General (Mass. Ad. Shs., 1930, p. 149), which were heard together and which involve the questions whether the certificate of the Attorney General for the state fund plan already referred to was "final," and, if not, whether the proposed act contained in said petition was within the excluding clause of the Forty-eighth Amendment to the Constitution.

The court held that the Attorney General's certificate

was not final; that the questions under the excluding clause were open to review by the court in appropriate proceedings; and that the various objections to the petition based upon the excluding clause were not sound. Material portions of the opinion are quoted in the footnote.[1] The court did not pass upon any constitutional questions which might be raised in regard to the proposed initiative "fund" arising outside of the excluding clause of the Forty-eighth Amendment, and said that such questions were not then properly before the court for consideration.

THE "DESCRIPTION" IN THE INITIATIVE PETITION.

The court makes it clear that the proposed "fund" is not a "state fund" at all, although it is proposed by section 40 that its title shall be "The State Motor Vehicle Insurance Fund." The Attorney General in his Brief had argued that it was a "private" corporation outside of all state departments, and apparently independent even of the Governor and Council. It seems clear from the opinion that by the express terms of the bill not a cent of the money of the Commonwealth could be used to meet

[1] MATERIAL EXTRACTS FROM THE OPINION OF CHIEF JUSTICE RUGG IN HORTON v. ATTY. GEN., ETC.

As to the question whether the certificate of the Attorney General to an initiative petition is reviewable the court said:

"There are not to be found in Article 48 of the Amendments to the Constitution any words indicative of a purpose that, respecting proceedings pursuant to its provisions, the courts are shorn of their ordinary powers. It is elementary in constitutional law under the Constitution of this Commonwealth that a duty is cast upon the judicial department of government, when the question is properly raised between litigants, to determine whether a public officer is overstepping constitutional bounds or statutes duly enacted to conform to the fundamental law as expressed in the Constitution. It is a delicate duty, always approached with caution and undertaken with reluctance, but an imperative duty which cannot be escaped. The words defining the authority and obligation resting on the Attorney General under 'The Initiative,' Part II, § 3 of Art. 48 of the Amendments to the Constitution, import no more of unreviewable finality than do those of c. 1, § 1, Arts. 3 and 4 of the Constitution and of Art. 2 of its Amendments creating the legislative powers of the General Court, or those of Art. 21 of the Amendments conferring upon commissioners power to divide the territory of the several counties into representative districts. Genuine controversy as to the conformity of acts of these bodies to the requirements of the Constitution is a justiciable subject and cognizable by the courts when properly presented. [Cases cited.] It follows irresistibly from these indisputable premises that the certificate of the Attorney General under said § 3, Part II, 'The Initiative,' is open to inquiry as to its conformity to the Constitution in appropriate proceedings. That was decided in substance in Brooks v. Secretary of the Commonwealth, 257 Mass. 91. It was stated in Opinion of the Justices, 262 Mass. 603, 606. Nothing contrary to these principles was decided in Anderson v. Secretary of the Commonwealth, 255 Mass. 366, or in Thompson v. Secretary of the Com-

losses or expenses or to make up any deficits of the "fund." The original bill (House No. 225 of 1929 referred to this Commission), out of which this initiative bill grew, was described in its title as well as its text as "An Act Establishing a State Fund." The initiative bill is still so described in the title *on the first page of House No. 202*, but this title is misleading because in the description of the bill, as determined by the Attorney General in his certificate (House No. 202, page 12), and used on the signature petition blanks (House No. 202, page 2) as required by the Forty-eighth Amendment, the word "State" is omitted. The bill has been heralded and commonly referred to, however, as a "state fund" bill, and is now printed for the Legislature under this misleading title.

As it is important that we should all understand the exact description of this initiative bill as it has been presented to the petitioners for signature and as it may be presented to the voters upon the ballot if it is not enacted by the Legislature, we quote in full the heading of the petition blanks which have been circulated containing the description of the bill as determined by the Attorney General under the Forty-Eighth Amendment.

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monwealth, 265 Mass. 16. Without analyzing those decisions, it is enough to say that, if anything there said is thought to be of broader sweep, it must be narrowed to the particular facts of each case and be taken to be limited by the underlying principles upon which the present decision rests."

As to the nature of the proposed "fund" the court said:

"The proposed law does *not* incorporate a private business with capital stock and other investments to be managed for profit by corporate officials elected by shareholders. It does *not* provide for the fixing of rates to be charged by such a corporation where rights in private property are involved. It creates a body corporate with the powers there enumerated and all others incident thereto. It establishes a quasi-public corporation. (See, for a somewhat similar method of incorporation, G.L., c. 178, § 14.) It is without capital stock and is to be managed by a board appointed by the Governor. The contributions to the 'Fund' must be based on fair and reasonable classifications and must be commensurate with adequate, just and reasonable charges to accomplish the aims of the proposed law. The proposed law does not by express terms rest finality of decision as to contributions to the 'Fund' in any individual or body. So far as concerns justness to the 'Fund' of the contributions, they are to be fixed by the board. If too low, it would be due to want of wisdom. No injustice can be done to stockholders or to property rights of this quasi-public corporation. If its rates are too low, it would be greatly embarrassed and doubtless would encounter complete disaster. But that presents no question under Art. 48 of the Amendments to the Constitution. No constitutional guaranty exists against incompetence of public or quasi-public officers. If the rates are unjust or unjustly discriminatory to the owners of motor vehicles, no appropriate appeal to the courts is closed to them. The 'Fund' and the board are open to whatever remedies may under the law be invoked against them by persons having legal standing to that end. Lehigh Valley Railroad v. Board of Public Utility Commissioners, 278 U. S. 24, 37–41.

AN INITIATIVE PETITION

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth

For An Act to create a Motor Vehicle Insurance Fund for the purpose of providing compensation for injuries and deaths due to motor vehicle accidents.

Description of Proposed Law

The proposed law provides for the compulsory insurance of the liability of owners and operators of motor vehicles for accidental injury and death caused to others by the operation of such vehicles, in a body corporate, created by the law itself, called the State Motor Vehicle Insurance Fund.

It further provides that such fund shall be under the control and management of a board of commissioners appointed by the governor; that at the time of registration of all motor vehicles or trailers, except those owned by corporations under the control of the Department of Public Utilities, or by a street railway under public control, or by the Commonwealth, or one of its political divisions, the registrant shall make a payment in the nature of a contribution to such fund; and that upon so doing he shall be deemed to be insured by said fund to the limit of $5,000 for injury to, or death of, one person, or $10,000 for injury to, or death of, more than one person in any one accident.

The amount to be paid by a registrant is established by the act and certain classifications of vehicles are set up; and it is provided that

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"We are of opinion that the proposed law is not vulnerable on *this* ground" (*i. e.*, lack of opportunity for judicial review).

"The proposed law does not make a 'specific appropriation of money from the treasury of the Commonwealth' contrary to 'The Initiative,' Part II, § 2, *Excluded Matters*, of Art. 48 of the Amendments to the Constitution. Definite contributions to the 'Fund' must be collected by the Registrar of Motor Vehicles and paid by him to the Treasurer and Receiver-General, who is to be the custodian of the moneys of the body corporate known as the 'Fund.' He holds these, however, not as money of the Commonwealth but as money of the body corporate known as the 'Fund.' Such contributions do not go into the treasury of the Commonwealth. They are not subject to the protections or to the laws governing the disbursements of public funds. Amendment 63 to the Constitution has nothing to do with such contributions because they are not money received on account of the Commonwealth. They are received and are to be disbursed on account of the body corporate known as the 'Fund' and in accordance with the orders of the board of commissioners who constitute its managers and have control of its affairs under the provisions of the proposed bill. See Opinion of the Justices, 261 Mass. 523, at 55.

"There is a certain awkwardness about constituting the chief fiscal officer of the Commonwealth the treasurer of a quasi-public corporation receiving and disbursing funds which do not belong to the Commonwealth. That, however, is a matter of legislative expediency and not of constitutional limitation. In this connection the contributions to the 'Fund' required of owners of motor vehicles must be regarded *not as excises or license fees, or other exactions under the taxing power of the Commonwealth*. They belong to the same general class as the regulations respecting brakes, lights and such like matters as to motor vehicles, designed to protect the public traveling on public ways.

"The proposed law provides that such proportion of all expenses of investigation of every motor vehicle accident involving personal injury (cast in the first instance upon the Registrar of Motor Vehicles as may be agreed upon by the Registrar of Motor Vehicles

the board thereafter, from time to time, may modify, alter or revise classifications, and increase or decrease the amounts to be so paid.

It further provides for the investigation of accidents and the settlement of claims.

The board is required to file a report of its assets and liabilities with the Commissioner of Insurance on the same basis as other insurance companies, and is subject to examination by the said Commissioner. It also forbids, under penalties, the making or presenting of false statements to such board relative to accidents and the obtaining of money from the fund by false statements.

It further provides that there shall be no appropriations made by the Commonwealth for the expenses of the fund, and that the board may borrow a sum sufficient for organizing and carrying out the provisions of the law relating to this fund.

The present compulsory motor vehicle insurance law is to be repealed, as is also the existing law limiting the time for beginning actions of tort for bodily injuries or death to one year, and certain other acts inconsistent with the proposed law are also repealed.

Comparison of the "Description" with the More Detailed Provisions of the Bill Itself.

While the description above quoted gives a rough outline of the bill supposed to comply with the strict legal requirements of such a description, yet no such

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the commissioner of the 'Fund' and the chairman of the Department of Administration) shall be charged to the 'Fund.' It makes no provision for a judicial review of the decision of these public officers on this point. Whatever may be said about this provision in other respects, we think that it cannot rightly be held to be violate of any Right 'of the individual'. . . ."

As to constitutional questions raised by the initiative bill other than those based on the Forty-eighth Amendment the court said:

"A further contention is that the proposed law exceeds the limitations on the legislative power of the General Court, which are extended to the legislative power of the people under the initiative. No arguments have been addressed to us in support of this contention other than already made upon other branches of the case and hitherto discussed. All questions *argued* as to the conformity of the proposed law to Art. 48 of the Amendments have been considered.

"The petitioners further contend that the proposed law, assuming that it conforms to the general scope of said Art. 48, is in its terms and effect violative of other provisions of the Constitution. Questions of the general constitutionality of the proposed law are not open to the petitioners in these proceedings. It does not appear that either of the respondents has undertaken to pass upon such questions. Plainly, no words in said Art. 48 expressly authorize at this stage, respecting a law proposed under the popular initiative, judicial inquiry into its conformity to other provisions of the Constitution.

"Jurisdiction is vested in the legislative department of government to consider the constitutionality as well as all other features of measures 'introduced into the general court by initiative petition.' See Art. 48 of the Amendments, 'The Initiative,' Part III, *Legislative Action*. When under this Part of said Art. 48 the proposed law shall be considered, there will be opportunity for the General Court or either branch thereof, if it so desires, to obtain advice as to its constitutional aspects from the Attorney General. G. L., c. 12, § 9. See also c. 3, Art. 2, of the Constitution."

colorless outline can give an adequate picture of the "body corporate" and its powers or the powers of its managers which the bill proposes to create.

In the first place, the title of the act describes the purpose of the proposed "fund" as that "of providing compensation for injuries," etc. Now "compensation" is commonly understood to describe a system of payments of fixed amounts for specific injuries regardless of negligence, but this initiative bill provides simply a monopolistic method of doing what the present law does, *i.e.*, provide insurance against judgments based on negligence.

We have already referred to the fact that the "fund" to be created by the bill is to be called "The State Motor Vehicle Insurance Fund." This name appears in the description on the signature blanks above quoted, and will appear upon the ballot if the bill is later submitted to the voters. This proposed title seems to us to raise a serious question of policy, whether the Legislature or the people under the Forty-eighth Amendment should lend the name of "The State" to any such monopolistic "body corporate" as is proposed in this bill when the state has no financial responsibility whatever for the insurance business to be conducted by this concern.

Since the court has decided that the "certificate" of the Attorney General is open to judicial inquiry, it seems that the "description" of the Attorney General must also be open to inquiry if it does not sufficiently describe the proposed law. The underlying idea of the Forty-eighth Amendment providing for the initiative is legislative action by an informed electorate. The Forty-eighth Amendment requires that the "description" of the proposed law upon the initiative petitions shall be the same "as such description will appear on the ballot." The fact that the Forty-eighth Amendment provides that the full text of the bill described on the ballot shall be sent to the voters in a state pamphlet before election does not alter or diminish the importance of the "description." While all the voters are to have an *opportunity*

to read the full text of the act, yet in interpreting so tremendously powerful an instrument as the Forty-eighth Amendment, for practical purposes, the facts of common knowledge and the common-sense relation of the voters to the question submitted to them must be borne in mind. There is no basis of fact in human experience for the violent presumption or "fiction" that all, or even a majority of voters, will read *through and understand* the practical meaning of a bill phrased as this initiative bill is phrased.

Such a presumption as applied to a Legislature of two hundred and eighty persons is necessary and reasonable, even though a bit strained, but when extended to the entire electorate of the Commonwealth it becomes a palpable and unnecessary absurdity. The Constitution of Massachusetts and its amendments were not intended to establish unnecessary absurdities as principles. Obviously for this reason the description of a measure before it goes upon the ballot was not left to the first ten signers, but was subjected to the supervision of a responsible state officer.

Of course we do not mean to suggest in any way that the description was consciously made insufficient by the Attorney General. It is an obvious inadvertence such as is bound to occur in connection with such petitions which are passed upon by a busy office in the midst of other duties. But the opinion in Brooks *v.* Secretary, 257 Mass. 91, indicates the importance of the "description" on the signature blanks, and inadvertence cannot cure the "description" if it is defective.

If, therefore, the "description" on the petition is not sufficiently descriptive of essential parts of the law in its relation to the government of the Commonwealth to comply with the test of "fairness to constituents," emphasized by Charles Jackson in the Constitutional Convention of 1820, a test which we assume underlies the Forty-eighth Amendment, then it would seem that there is no initiative petition pending before the Legislature for action. Whether the "description" above quoted

from the petition blanks is insufficient in any essential respect to meet the requirements of the Forty-eighth Amendment may be an "important question of law" as to which the Legislature may wish to secure the advisory opinion of the justices of the Supreme Judicial Court under chapter 3 of the Constitution before taking final action upon the initiative bill. No question of the sufficiency of the "description" was raised or argued before the court in the Horton case. Whether the "description" is so defective that it does not comply with the underlying principle of the Forty-eighth Amendment we do not know. But we call attention to certain points in which it seems to us noticeably insufficient to inform either the petition signers or voters of essential features of the proposed law.

First. — The "description" states merely that the proposed law "provides for the investigation of accidents and the settlement of claims." The "description" does not inform either the petition signers or the voters that the bill proposes to disrupt the Department of Public Works by placing upon the Registrar of Motor Vehicles, a subordinate official in that department, the entire burden of investigating "every accident where personal injury did in fact or may result" in Massachusetts from the operation of 800,000 or more motor vehicles. It does not inform them that the Registrar is to investigate these accidents for the double purpose of ascertaining whether the Commonwealth should proceed criminally against the owner of the car, and whether upon the same facts the representatives of the Commonwealth should defend that same car owner against civil liability for damages, thus placing representatives of the Commonwealth on both sides of the same case in different proceedings.

Second. — While the second paragraph of the "description" states that "at the time of registration of all motor vehicles" the car owner "shall make a payment in the nature of a contribution to such fund, and that upon so doing he shall be deemed to be insured" to the limit of

$5,000 and $10,000, the fact that this provision would result in an insurance monopoly which would prevent car owners from buying safe insurance of other insurance companies if they wished to within the required limits, unless they wished to carry and pay for double insurance within those limits, is not emphasized in any way so that it would be noticed.

Third. — The "description" contains no indication whatever that the amounts to be paid upon the registration of a car for insurance are to be "flat" rates throughout the Commonwealth, regardless of the insurance loss experience of different parts of the Commonwealth. In view of the recent opinion of the Supreme Judicial Court in the case of Brest *v.* Commissioner of Insurance (Mass. Adv. Sh. 1930, p. 113), sustaining classifications and zoning rates fixed by the Commissioner under the test of "fair and reasonable classifications of risks, and adequate, just, reasonable and non-discriminatory premium charges," we fail to see how a "description" which proposes to establish a flat rate on all private passenger cars throughout the Commonwealth regardless of loss experience, in place of the hitherto uniform practice of territorial rates based on loss experience, can be an adequate "description" to comply with the Forty-eighth Amendment.

Fourth. — Since the agitation about the present insurance law has arisen largely as a result of complaints about the rates, it seems that this entire omission from the "description" of any reference to the proposed new rating policy may be so serious an omission as to invalidate the initiative petition.

Fifth. — While the "description" states that the amounts to be paid upon registration are set up in the act, and that "the board thereafter from time to time may modify, alter or revise classifications and increase or decrease the amounts to be so paid," it does not inform the petition signers or voters that the deficit of any one year must be made up from the rates of the next year so that the car owners of one year may have to pay in

their rates a sufficient amount to cover the losses incurred in previous years by other car owners. This provision, which is contrary to insurance practice, seems of essential importance in describing such a bill for the information of petition signers or voters, particularly as the rates set up in the bill are in our opinion insufficient to meet the losses and expenses of the first year, so that the rates of succeeding years will have to be raised to an indefinite amount, and possibly in the course of a few years to a higher figure than any rates that we have had thus far. It seems to us that the principle of "fairness to constituents" as a matter of policy, and possibly as a matter of constitutional law, requires that such important changes, or some of them, should be indicated both to the petition signers and the voters in the "description."

We emphasize these views because from casual conversations which members of the Commission have had with individual citizens we believe that the idea of creating such an insurance monopoly with flat rate premiums throughout the Commonwealth, and with the practical prohibition of the right to buy safe insurance in safe companies, has not occurred to many persons who may seem at present vaguely interested in the idea of a "state fund." From similar conversation we believe that it is a common impression that this bill would put the state behind the "fund" in a financial sense, and we do not believe that the people generally realize that this is not so, nor do we believe that they have any idea of the proposals already referred to relative to the Department of Public Works.

We will now proceed to a still more detailed study of the proposed bill in the light of the brief of the Attorney General and the opinion of the court in the Horton case.

Hints as to the Nature of the "Fund."

It appears from the argument of the Attorney General in his Brief in the Horton case that he considered the "fund" a *private* corporation.

The court says that the "fund" is a "*quasi-public corporation*," and refers in parentheses to the "general insurance guaranty fund" for savings bank life insurance created by General Laws, chapter 26, sections 9 and 12, and chapter 178, sections 14, etc. While that "fund" is "a body corporate," it is held and managed by a board of trustees and is a division of the Department of Banking and Insurance. Its activities were recently regulated by St. 1929, chapter 162. It is a centralized unit within the department referred to.

In another passage in the opinion the court says that the contributions to the "state motor vehicle insurance fund," to be created by the initiative act, "are not money received on account of the Commonwealth. They are received and are to be disbursed on account of the body corporate, known as the 'fund' and in accordance with the orders of the board of commissioners who constitute its managers and have control of its affairs." Reference is made to the Opinion of the Justices, 261 Mass. 523 at 550, in which the justices discussed the bill relating to public management and operation of the Boston Elevated Railway, and stated that the money received in the management of that railway is not "received on account of the Commonwealth" in the sense in which those words are used in Article 63, section 1 of the Amendments to the Constitution, but that "the railway company remains in private ownership." That railway company was an existing private corporation engaged in a public service at the time that its management was taken over by the trustees appointed by the state. The management of that corporation is also a centralized unit created under the legislative power to regulate and control a natural transit monopoly.

The proposed "state motor vehicle insurance fund" seems to differ very materially, however, from either the "general insurance guaranty fund" for savings bank life insurance or the Boston Elevated management. So far as we are aware, Massachusetts has never before created such a "quasi-corporation" as is now proposed. We are

at a loss to see how it fits into our constitutional system of government. In the first place, it is not a "state" fund in any responsible sense, except that it is to be "under the control and management of a board of three commissioners to be appointed by the governor." It has been described as a "state mutual insurance company," but, as we have pointed out elsewhere, there is nothing mutual about it. It seems to be in fact a compulsory insurance monopoly without any liability on the part of the state or anybody else to make up any losses which it may incur except by raising the compulsory insurance rate in the year or years following that in which such losses may be incurred, thus making car owners of one year pay for the losses of other car owners of preceding years. As the court says, while "the contributions to the fund must be based on fair and reasonable classifications, and must be commensurate with adequate, just and reasonable charges to accomplish the aims of the proposed law," yet, "if its rates are too low it would be greatly embarrassed and doubtless would encounter complete disaster."

THE POWERS OF THE PROPOSED BOARD OF COMMISSIONERS AND THEIR RELATIONS TO AT LEAST SIX STATE DEPARTMENTS.

It is interesting to examine the powers of the proposed board of commissioners and their relation to the other branches and officials of the government.

First. — They are to control and manage "the fund," but they are not to have the custody of "the fund." By section 34A the Treasurer and Receiver-General is to be the "custodian of the funds of the fund." Apparently, therefore, the Treasurer and Receiver-General, one of the general officers of the state, is to be subject to the orders of these commissioners and pay out money in any way that they may direct. As the court suggests, "there is a certain awkwardness about constituting the chief fiscal officer of the Commonwealth the treasurer of a quasi-public corporation receiving and disbursing funds which do not belong to the Commonwealth."

Second. — While the board is to control and manage "the fund," only "the commissioner," who is to be one member of the board, is to have authority to "appoint and remove a secretary and such deputies, clerks, physicians, attorneys and other assistants as the management of the fund may require, and fix their compensation, terms of service and define their duties." These appointees are not to be under the civil service law. To place in the hands of one member of this particular board, who is to receive a salary of $7,000, the entire power of appointing and removing all the employees of every character for the purpose of conducting an insurance business monopoly for the entire Commonwealth, involving the collection and distribution of, at least, $11,500,000, would be a unique step in the history of Massachusetts.

Third. — While the commissioner is to have all this power of appointment and removal in connection with "the management of the fund" by section 41, although the "control and management of the fund" is given to the full board of three commissioners by section 40, this is only a part of the power to be given to this board in addition to the powers thus given to one member of it. By General Laws, chapter 16, sections 1 to 5, the Registrar of Motor Vehicles is a subordinate officer of the Department of Public Works, and as such responsible to the head of that department. By the proposed section 29A (of House No. 202) he is to be also responsible to the proposed board of commissioners, who belong to no state department, for the exceedingly difficult and important work of investigating "every accident where personal injury did in fact or may result," and is to file two reports, one for his own information as Registrar, relating to "responsibility and liability" for the accident, and the other for this board of commissioners, "containing a duplicate of that filed with the registrar and in addition a detailed account of all material facts relative to personal injuries, claims of injuries or deaths." This means that the Registrar of Motor Vehicles, in addition

to his present duties, which seem enough for one man, and which he performs under one department, is to be required, in addition to all the investigating work which is now done by him, to undertake also all that which is now done by all the investigators enployed by all the seventy or more motor vehicle liability insurance companies in Massachusetts. It is not stated in the act who is to select and appoint and pay all the investigators that might be needed to enable the Registrar to do this work. It is provided, however, in section 29A, that the expense of all this investigation should be divided in some way, and such proportion of it "as may be agreed upon by the registrar, the commissioner of the fund and the chairman of the department of administration and finance shall be charged to the state motor vehicle insurance fund." There is no provision for majority action, so the "commissioner of the fund" is given a veto on the views of the budget commissioner and the Registrar as to the appropriation made by the Legislature for the Public Works Department.

Presumably the balance of these expenses must be paid by the Commonwealth as a part of the expenses of the Department of Public Works, but if the Legislature did not appropriate a sufficient amount of money for that department to furnish the Registrar with a sufficient number of investigators to do all this enormous amount of investigation it would be difficult to see how "the fund" could function except by the employment of an *unlimited* number of "other assistants" by "the commissioner" under the broad "one man" power already referred to. At all events, it seems clear that the Registrar of Motor Vehicles would be in a most difficult and embarrassing position, as he would be at the same time responsible to the Commissioner of Public Works, who would have nothing to do with the "motor vehicle fund" except to observe its operations, and to "the board," who would rely on him to do their investigating in order to run the motor vehicle liability insurance business for the entire Commonwealth, and if he or his investigators

did not succeed in doing it to their satisfaction, it seems obvious that there would be continuous friction between the board and the Department of Public Works, with the unfortunate Registrar in the position of being tossed from one to the other. Incidentally, the Commissioner of Public Works, whose department is involved in this operation, is to have nothing to say about apportionment of the expenses of all this investigation. That is to be done by the Registrar and "the commissioner of the fund" and the budget commissioner. How any one would get paid if they did not agree is not clear.

It is also not clear how the Legislature or the people under the Seventy-sixth Amendment can constitutionally authorize this free lance commissioner to decide or take part in deciding what shall be done by a branch of the Department of Public Works, or how under the Fifty-third Amendment the Legislature or the people can constitutionally authorize this commissioner to decide or take part in deciding what shall be done with any money appropriated by the Legislature for the Department of Public Works. The Legislature may wish to secure the opinion of the justices of the Supreme Judicial Court upon these questions.

Section 34E in the proposed bill provides that the board shall file annually with the Insurance Commissioner a report showing assets and liabilities, etc., on the same basis as other insurance companies, "so far as applicable." The bill nowhere exempts this proposed "private" or "quasi-public" "body corporate" from the general provisions in regard to insurance reserves and other provisions as to the safe conduct of the insurance business by solvent companies which are contained in chapter 175. We are not clear whether the creation of this monopolistic insurance company by special act would by implication exempt that company from those general provisions of safety or not, as a matter of law. If it would not, and if the rates set up in the act for any one year, including the first year, are insufficient in accordance with sound insurance experience and business prin-

ciples of safe management to make the "fund" "solvent," it might conceivably be the duty of the Insurance Commissioner to apply to the court to prevent the company from beginning or continuing business in the same way in which he applied to the court to close up three insolvent mutual companies. The Legislature may wish to obtain the opinion of the justices of the Supreme Judicial Court upon this question before taking action on the bill. Certainly it would be a serious matter if the present law were repealed by the proposed law, and we then found that "a quasi-public body corporate" had been created to run an insurance monopoly on an insolvent basis so that before beginning business at all the solvency of the "fund" would require that the board should increase the rates set up in the act in order that the car owners of each year should carry in their rates the losses and expenses of that year.

Fourth. — By the proposed section 31B "the board" is to make rules and regulations for carrying out the provisions of law relative to "the fund," and these rules and regulations are to be "subject to approval by the governor and council," but except for registering such approval the Governor and Council are to have nothing to do with "the fund."

Fifth. — Now this "fund" by section 34B is to enter into a contract of insurance with every motor vehicle owner in Massachusetts who registers a car. In other words, this "fund" managed by this board is to make upwards of 800,000 contracts of insurance, and by section 34C it is to "defend" or "settle" "in the name and on behalf of the assured" any claims, etc. (probably, at least 50,000 a year), "alleging injuries and demanding damages," although such claims, etc., "may appear to be wholly groundless."

Sixth. — By section 34E the board is to "file annually with the insurance commissioner a report showing assets and liabilities computed on the same basis as assets and liabilities of insurance companies so far as applicable, and the fund may be examined at any time by the insur-

ance commissioner as provided in section four of chapter one hundred and seventy-five for the examination of domestic insurance companies." This brings the board into relations with the Insurance Department as well as the Governor's office, the Department of Public Works and the Treasurer's department, but it is not clear what the Insurance Commissioner has to do after he has examined "the fund" if he does not find it in a satisfactory condition. As the board would not be a division of the Department of Banking and Insurance the Commissioner if not satisfied with the condition of "the fund" would be in the embarrassing position of criticizing this "free lance" "body corporate" which is operating in and out of several departments of the government without any apparent responsibility to anybody.

Seventh. — By section 34F *each* of the commissioners of "the fund" is to be placed under the duty of reporting to the Attorney General or the district attorney the facts, "*if it appears*" to *that* commissioner (not to the whole board) "that any person has violated" section 34F by acting or aiding in making or presenting any wilfully false statement in respect to any material fact or thing pertaining to a claim, or who obtains any money from "the fund" by means of any such statement. Apparently each commissioner is expected to act, even if the other two disagree with him. This is a pretty broad and vague duty to place upon a minority member who may or may not be a person of sound judgment in regard to such matters.

Eighth. — By section 4, on page 11 of House No. 202, there is another most interesting provision, that while "there shall be no appropriations made by the commonwealth for current or ordinary expenses of the fund," yet "the board is hereby authorized to provide *by temporary loan* a sum sufficient for organizing *and carrying out* the provisions of law relative to the fund." How this loan is to be made is not specified, nor does it appear who is to hold the funds received from such loan, as the Treasurer and Receiver-General is to be the "custodian"

merely of "the contributions received by the registrar." As the loan would not be on the credit of the state or from state money, the only method of borrowing would be by interest-bearing certificates or notes of "the fund" secured by the anticipation of the compulsory contributions to be received in the year following the loan.

This board of commissioners of "the fund," therefore, instead of being a centralized responsible unit is to be in and out, first, of the Governor's office with its rules; second, of the Treasurer's department, where the custody of "the fund" is be; third, of the Public Works Department, which is to do most of the investigating; fourth, of the Department of Administration and Finance in the matter of apportioning cost of investigation; fifth, of the Insurance Department, which is to receive an annual report and examine "the fund" without any duties based upon such examination and having no control over the operations; and sixth, to feed the Attorney General's department or the district attorney's with complaints, and in addition to all this, outside of all the departments and all the state offices, is to be conducting an insurance monopoly involving at least $11,500,000 for the 800,000 motor vehicle owners of the state.

The Seventy-sixth Amendment to the Constitution provides that "the executive and administrative work of the commonwealth shall be organized in not more than twenty departments, in one of which every executive and administrative officer, board and commissioner, except those officers serving directly under the governor and council, shall be placed. Such department shall be under such supervision and regulation as the general court may from time to time prescribe by law." Just how the proposed "fund" and its board of commissioners to run this enormous insurance business fit in our state government under this Seventy-sixth Amendment to the Constitution we fail to see, and this is a constitutional question which has not yet been passed upon by the Supreme Judicial Court. It was suggested in the Brief of the petitioners in the Horton case that the proposed state

fund bill would create a twenty-first department in violation of the Seventy-sixth Amendment, *but as this was one of the constitutional questions not involved in the excluding clause of the Forty-eighth Amendment the court did not pass on it.* Accordingly it is still an undecided question. It is true that the Attorney General, by his certificate that the proposed initiative bill "is in proper form for submission to the people," may have intended to rule on this question under the language of the court in the case of Anderson *v.* The Secretary of the Commonwealth, which has been superseded by the opinion in the Horton case. This possibility appears from the following extract from the Brief of the Attorney General in the Horton case in answer to the suggestion that the proposed state fund bill would create a twenty-first department. Presumably the following argument on this point was the basis for any ruling which he may have intended to make in certifying the initiative petition:

> The simple answer to this allegation is that the proposed measure creates no new department. It creates a *private* corporation which is to be managed by a board of commissioners who are in much the same situation with respect to their duties as are the trustees of the Boston Elevated Railway Company, for example. It so happens that by the terms of the measure the Fund's commissioners, or managers as they really appear to be, are to be appointed by the Governor. This mere fact of appointment does not make the board a department of the Commonwealth as that word is used in Amendment XLVI. The Governor is given no power of removal over such commissioners of the fund, nor do they in any sense serve under him.
>
> Section 3 of the proposed measure in unmistakable language makes the State Motor Vehicle Insurance Fund a *private* corporation. The language of the pertinent parts is as follows (Rec. p. 6):
>
> SECTION 40. The State Motor Vehicle Insurance Fund, hereinafter in this act called the fund, is hereby created a body corporate with the powers provided in this act and with all the general corporate powers incident thereto. It shall be under the control and management of a board of commissioners to be known as the Board of Commissioners of the State Motor Vehicle Insurance Fund.
>
> SECTION 41. The board of commissioners of the fund shall consist of a commissioner and two associate commissioners, all of whom shall be appointed by the governor, with the advice and consent of the council. The first appointment of the commissioner and associate commissioners

shall be for terms of two, four and six years, said terms to be allotted to the commissioner and to the associate commissioners as the governor may determine. Thereafter the governor shall appoint the commissioner and associate commissioners for the term of six years. The commissioner shall receive an annual salary of seven thousand dollars, and the associate commissioners shall receive an annual salary of six thousand five hundred dollars. Said board is hereby vested with all the powers necessary to carry out the provisions of law relative to the fund. The commissioner may appoint and remove a secretary and such deputies, clerks, physicians, attorneys and other assistants as the management of the fund may require, and fix their compensation, terms of service and define their duties.

Neither a *private* corporation, though granted a power to operate to the exclusion of other *private* corporations engaged in the same form of a business charged with general public interest, nor the board of management of such *private* corporation, though it be appointed by the Governor without responsibility from it to him or power of removal on his part, nor both together, resemble the entity described by the word "Department."

With all due respect for the Attorney General's opinion, or rather for the Attorney General's argument as expressed, if the argument in the Brief was not intended as an opinion, we remain unconvinced in the light of our analysis of the powers and functions of the board of commissioners of "the fund" and its relations to the other departments of the government. If this sort of independent "quasi-corporation" (whether "public," as the court says, or "private," as the Attorney General says) can be created in this manner for the purpose of running one kind of a monopolistic insurance business, where is this process to end, and what will be the nature of the state government after it has proceeded from one kind of insurance business to another, and then perhaps to other private businesses? How can the system of departmental responsibility survive any such mixing process as is proposed by this so-called state fund bill?

Does the Legislature or do the citizens of Massachusetts believe that any such mixed-up plan for handling all their motor vehicle liability insurance is going to help them to secure more safety on the roads, or lower rates of insurance, or as satisfactory results in payment for injuries as our present law? Does anybody believe that it

will succeed in doing anything except, as the Supreme Judicial Court suggests, "set the rates too low" so that "it would be greatly embarrassed and encounter complete disaster"? Some 60,000 policy holders in three mutual companies, and the injured claimants involved in those companies, have recently experienced the results of badly managed, unsound insurance companies. The people of Massachusetts should not be misled by the term "state fund" into thinking that the proposed initiative bill would put the state behind this proposed monopolistic insurance company which is to be called the "state fund." Under the opinion of the Supreme Judicial Court the act specifically provides that the state is not behind it, and that if it is not managed on sound insurance principles it will "encounter complete disaster." Under the opinion of the Supreme Judicial Court the state will be under no obligation whatever to meet any losses of injured persons or to make up any deficits in the "fund," and under the opinion of the justices in 182 Mass. 605 it is difficult to see how the state could undertake to pay such losses or make up such deficits or otherwise enter into the private business of insurance, for insurance, in spite of the fact that it has certain public aspects which warrant a certain amount of legislative regulation and control, seems still, under the Massachusetts Constitution, to be essentially a private business, and the Forty-seventh Amendment, which has to do with common necessaries in time of war or public exigency, has nothing to do with the insurance business. That business does not seem to be a public function under our Constitution to the extent of warranting the state in using a single cent of the money of the taxpayers in motor vehicle *liability* insurance of the proposed character, or in making up the deficit of any "*private*" or "quasi-public body corporate of the kind proposed." Accordingly "the fund" must stand on its own feet.

We respectfully suggest that before this bill is acted on by the Legislature, under the Forty-eighth Amendment, the Legislature should exercise its right to secure the

opinion of the justices, as the constitutional advisers of the government, as to the exact nature of this proposed "quasi-public body corporate," and whether it fits into the government of the Commonwealth under the Seventy-sixth Amendment, and if so, how, and further, whether it would not be an unconstitutional interference with the freedom of contract of the private citizen to compel every car owner in Massachusetts to buy his insurance of this proposed "fund" and prohibit him from buying it anywhere else as a condition of using a motor vehicle on the highways.

How can the mere provision for the appointment of three managers by the Governor, as the only business responsibility to be assumed by the state, bring the creation of this irresponsible compulsory insurance monopoly and practical prohibition of the individual's right to buy safe insurance from safe companies, within the police power, or the power to regulate the use and safety of the highways?

THE "STATE FUND" BILLS.

House No. 225, already mentioned, and six other measures specifically referred by the Legislature to this Commission deal in varying forms with the proposal that the Commonwealth enter into the insurance business, or appear to enter it by the creation of a monopolistic "fund," and by excluding privately managed companies from this field of liability insurance in the manner described in the discussion of the initiative bill (House No. 202).

Public hearings were held on all of these bills, and the whole subject has been carefully considered by the Commission.

In its consideration of these measures the Commission has applied two basic tests: (1) Should the Commonwealth enter this field? and (2) Is any one of the seven bills a practical and workable measure?

Each of these bills was printed as a legislative document in the session of 1929. They may be described as follows:

Senate No. 26, on petition of Armand C. Bang of Newton, establishes a fixed scale, with rates uniform, both as to locality and type of car; it provides that every person injured by a motor vehicle, regardless of liability on the part of the owner or operator thereof, shall be entitled to receive indemnity based on his earning power and the duration of disability resulting from the accident, somewhat after the plan now in operation under our Workmen's Compensation Law.

House No. 193, on petition of Joseph LaFontaine of Brockton, provides in similar manner that every owner of a motor vehicle shall contribute to a state insurance fund, to be administered by the Registrar of Motor Vehicles, contributions being uniform as to locality and type of car, and out of which fund all judgments arising out of motor vehicle accidents should be paid.

House No. 225, on petition of Frank A. Goodwin of Boston, is similar in scope to House No. 193, but is worked out in more detail.

House No. 258, on petition of John J. Cummings of Boston, proposes the creation of a Massachusetts Motor Vehicle Mutual Insurance Association, to be managed by a board of directors to be appointed by the Governor, which alone would be given authority to write policies of motor vehicle liability insurance.

House No. 259, on petition of Representative Martin Hays of Boston, contemplates the establishment of a Massachusetts State Automobile Insurance Company, which would be permitted to enter into competition with privately managed companies in the motor vehicle liability field.

House No. 867, on petition of Representative Wm. P. Corbett and John J. Murphy of Somerville, is very similar in its scope to House No. 193.

House No. 868, on petition of former Mayor Lawrence F. Quigley, Chelsea, provides for the establishment of a

state fund to be under the control of a board of commissioners and to be obtained from an increase in the tax now levied on sales of gasoline, and out of which all judgments would be paid by order of the board.

The Commission is unanimously of the opinion that none of these bills should be enacted.

There has not appeared to us any compelling reason or necessity for the entrance of this Commonwealth into the realm of strictly private business in competition with its citizens, but there do appear abundant reasons for keeping out of it.

Our form of government is fundamentally opposed to wholesale centralization of authority, and one of the imminent dangers of today is the multiplication of bureaus for every purpose under the sun and the train of evils that follow in their paths.

Senate No. 26, as indicated above, is fashioned after the Workmen's Compensation Law of this state, but that law is based upon the contractual relationship which exists between employers and employees. Under the terms of Senate No. 26 it is not to be applicable to injured persons when such contractual relationship exists between themselves and the owner of the motor vehicle causing the injury. With respect to all other injured persons, no such contractual relationship does or can exist. Furthermore, this bill presents grave difficulties as to underwriting. The amount of indemnity which would be paid under its provisions would in most cases be greatly out of proportion to the actual damages sustained. We think that it is neither practical nor workable, and that its operation would prove extremely unsatisfactory.

House No. 193 establishes a schedule of fees for insurance even lower than that proposed to be established in House No. 225, and in our later discussion of the latter bill we shall show that the schedule of fees there proposed is wholly inadequate. Furthermore, there is in House No. 193 no provision for such adjustment of fees as experience may demonstrate to be needed, and

it is inevitable that if House No. 193 were enacted into law, the motor vehicle insurance fund proposed therein would speedily become insolvent.

House No. 258 is admittedly but a skeleton which sets forth an idea without attempting to provide in detail the machinery necessary to carry it into legal effect. It contains no provisions authorizing either the collection of premiums or the payment of any indemnities.

Under the provision of House No. 259, which is intended primarily as a means to bring about competition between existing private companies and a company to be publicly managed and controlled, it is conceivable that the state company might be permitted to do business under a schedule of rates different than those charged by private companies. The present law provides that the rates to be charged by private companies shall be fixed by the Commissioner of Insurance, based on the experience of all companies. House No. 259 provides that the rates for the proposed state company shall be fixed by the Commissioner of Insurance, the Registrar of Motor Vehicles and an Assistant Attorney General, and shall be based primarily upon the experience of that company alone.

House No. 867 is open to the same objection as House No. 193 in that its schedule is lower than that proposed in House No. 225; and like that bill it contains a provision that the rates may be revised from time to time in order to meet the costs of operation.

House No. 868 is open to serious objections from an underwriting standpoint, in that receipts from an increased levy on sales of gasoline would ever be an indeterminate amount. The tax on sales of gasoline has been operative less than a year, and the revenue derived from this source necessarily fluctuates because of business and climatic conditions. But based on the returns thus far available it is clear that an increase of not less than 3 cents in the tax per gallon would be necessary if such a plan were adopted, and the probabilities are that the additional tax necessary would be 4 cents. This would

mean a gasoline tax in this state of at least 5 cents per gallon, a rate which would be higher than that of any other state comparable with Massachusetts. In view of the underwriting difficulties previously referred to, and the undoubted disadvantageous effect such a high tax would have upon the volume of tourist traffic to which the Commonwealth caters, the Commission is unanimously of the opinion that this bill is neither practical nor workable.

DISCUSSION OF THE SO-CALLED "STATE FUND" BILL. HOUSE, No. 225 AND FURTHER DISCUSSION OF THE INITIATIVE "FUND" BILL.

House No. 225 of 1929 was most discussed at hearings before the Commission. It is in many respects similar to the Initiative bill, House No. 202 of 1930, already discussed, which grew out of it, and much that we say about House No. 202 applies to House No. 225, and *vice versa*.

The Commission is unanimously of the opinion that neither House No. 225 nor House No. 202 of 1930 should be enacted into law.

Both bills provide that the "fund" shall enter into the business of insurance to the extent of the present motor vehicle statutory coverage, and that to this extent no private insurance company shall be permitted to engage in the business of insuring owners of motor vehicles against liability for personal injuries occasioned by the operation of their cars, except for insurance in excess of the required amounts. Both bills would compel every car owner to buy from the state at a flat rate price fixed by the state the required amount of insurance of $5,000 and $10,000, and would prohibit them from buying it anywhere else. Any car owner who wanted to protect himself by more than the required amount of insurance, however, would have to buy it at increased rates from private companies. In case of accident he would be defended by two lawyers, one hired by the state and one by the insurance company, and the two lawyers might not agree as to the conduct of the case.

Each car owner might also be liable to prosecution in the criminal court by a state employee while he was being defended by another state employee in a civil suit growing out of the same accident. We do not believe that the car owners of Massachusetts want to create any such situation.

In Com. *v.* Strauss, 191 Mass. 545, the court sustained a statute which prohibited sellers of goods from making it a condition of the sale that the plaintiffs should not sell or deal in goods of anybody else. The purpose of the statute as explained by the court was that the kind of contract referred to "would be injurious to the public as tending to crush competitors and thus create a monopoly from which the community as consumers would ultimately suffer." That statute now appears as section 1 of chapter 93 of the General Laws.

With that statute on the books for the purpose of preventing monopoly, it would seem curious if the Legislature or the people should proceed deliberately to create such an insurance monopoly.

The Proposed "Flat Rate."

Both bills also fix a flat rate of $16 for private passenger cars for the first year. This rate may seem attractive to car owners in territories which now have higher rates. Insurance experience data show that this rate would be insufficient to meet the losses paid and required reserves for unsettled claims, as the amount required for those purposes in 1927 was $19.12 for each private passenger car, while in 1928 the amount required had grown to $19.35. The act provides that the deficit of one year must be made up by the rates of succeeding years. Accordingly, the car owners of one year would have to pay in their rates for losses caused by other car owners in previous years.

Both bills provide that the owner of each motor vehicle, except those coming within such classes as are excluded under the present law, shall, at the time of applying for registration of his motor vehicle, contribute to the state

fund an amount figured *on a flat rate throughout the state* as set forth in the bill. For the purpose of these *state-wide flat rates* motor vehicles are classified according to their use, the present difference in the rates charged for private passenger cars according to their size and value being eliminated and all of such cars being charged the same rate.

If there is strong objection to the compulsory feature of the present law under which there is a choice of approximately 74 mutual and stock companies, how much greater will be the objection if all choice is removed and purchase is limited to a single fund, the administrators of which have arbitrary authority to charge car owners not only an amount adequate for the risk involved, but additionally, a contribution to make up the losses and expenses occasioned by those insured during some previous year or indeterminate number of years, who did not pay an adequate premium for their own insurance.

Both bills provide that the owner of a motor vehicle which is involved in an accident resulting in death or personal injury shall make prompt report thereof to the police in the community where the accident occurred, or, if there be no organized police force, to the Registrar of Motor Vehicles.

Every accident so reported is to be investigated by the Registrar of Motor Vehicles, and the investigator in each case is required to file two reports, one of which will be sent to the Registrar for disciplinary action, if the facts warrant; the other to the board of commissioners of the fund for their use in adjusting such claims as may arise out of the accident.

The board is given authority to pay such claims within the monetary limits established in the present compulsory law, viz.: "to the amount or limit of five thousand dollars, on account of injury to or death of any one person, and subject to such limits as respects injury to or death of one person, or ten thousand dollars on account of any one accident resulting in injury to or death of more than one person."

In determining the amount to be paid on any given claim, the board in both bills is authorized to pay any awards which may be obtained through due process of law, or it may make an agreed settlement in any case, though the allegations and demands "may appear to be wholly groundless." (See Section 34C.) Is it likely that such settlements made by the State will be any more satisfactory than those complained of under the present law?

By both bills if the contributions made in any year are insufficient to meet the aggregate of payments authorized by the board, the deficit shall be made up in the ensuing year by an increase in the rates of contribution as fixed in the schedule above set forth, and the board is given authority to make, each year, such changes in the schedule as may be necessary to bring about substantial conformity in receipts and expenditures, including in said expenditures payments for settlements of both claims and administration expenses. This is the part which throws the deficit caused by the losses of one year on to the car owners of the next and subsequent years.

Section 4 of House No. 202 provides that there shall be no appropriation by the Commonwealth for current or ordinary expenses of the fund, but the board of commissioners is given authority to borrow such sums as may be needed for organizing the department and carrying out the provisions of the bill. How they are to borrow is not stated. We have already referred to this matter. The money could not be borrowed from or by the Commonwealth under the bill. (*Cf.* the Sixty-second Amendment.)

Another provision of House No. 202 repeals the present statutory limitation of actions of one year in these motor vehicle tort cases, thus allowing such claims against the fund to be filed at any time within six years after the date of the accident out of which the claim arises, throwing the state open to the claim imagination of plaintiffs or their attorneys for five years longer than is allowed by the present law.

The Proposed Administrative Board.

The bill provides for the establishment of a board, consisting of a commissioner and two associate commissioners, to which would be given full power to administer the law. But to the commissioner alone it would give authority to "appoint and remove a secretary and such deputies, clerks, physicians, attorneys and other assistants as the management of the fund may require and fix their compensation, terms of service and define their duties." In other words, the two associate commissioners, each of whom would be jointly responsible with the commissioner for administering the fund, would have no control over the employees of the board. Furthermore, the bill places no limitation on the commissioner as to the number of persons who may be employed in either of the several classifications, and no limitation as to the salaries that may be paid. It may be further noted that such employees are not required to be under civil service.

Vitiating the Budget System.

It should be noted that this bill (House No. 225 of 1929), vitiates the budget system under which the finances of the Commonwealth have been so efficiently managed. Each state department is now required to turn over to the state treasury all of its receipts in fees and from other sources, and no public money can be expended except after specific appropriation by the General Court as a part of the annual state budget. Yet the board proposed to be established under this bill would be permitted to expend such sums as it might see fit, without any semblance of restraint, and to levy upon the motor vehicle owners of the Commonwealth such assessments in the form of "contribution charges" as would be needed to meet its expenditures, whether or not the fund were efficiently managed.

Inequitable Distribution of Rates.

Not only are the contribution charges specified in both bills inadequate to meet the expenses of its operation, but they are based on a plan which would result in gross inequalities. Such a plan cannot be recommended by a commission which was directed by the General Court to recommend a system which would "provide for a more equitable distribution" of the burden of meeting the losses resulting from motor vehicle accidents.

As already explained the plan proposed is one for "flat" rates throughout the Commonwealth, both as to localities and use of cars, and differing only with respect to whether the vehicle to be protected is a private passenger car, commercial vehicle, or one of the other classes into which motor vehicles are segregated under the terms of the bill.

Under the state fund schedule of rates or contributions it has been estimated that upon the experience of the year 1928 the state would receive about eleven and a half million of dollars. This is even less than the amount actually paid out during that year by the insurance companies in losses alone, with no allowance whatever for the expense of investigation and adjustment of claims, which are vitally necessary to keep the losses within reasonable limits, general overhead costs, the expense of the statistical bureau, servicing, and the fair profit to which any honorably conducted business enterprise is entitled.

The same may be observed with reference to private passenger cars, figured upon the same basis, except that the amount received from the so-called contributions would be about $8,750,000, whereas the amount actually paid out in losses in 1928, on that class of cars, exclusive of all expenses, was over $8,950,000, or about $200,000 more than the funds available from contributions.

An owner living on the island of Nantucket, where a motor vehicle accident is a rare occurrence, would be

obliged to make the same contribution as an owner living in Chelsea, a community which, in 1927 and 1928, developed the highest reported accident frequency in the United States, — 27.2 accident claims for every 100 passenger cars principally garaged in the city.

Neither bill makes a distinction between different makes and sizes of cars, and provides that the owner of the smallest car shall make exactly the same contribution as the largest. In theory there may be slight justification for this provision, but theory must ever give way to fact, and the experience of 1927 and 1928 demonstrates that the larger cars do cause loss payments larger than those made on account of the smaller cars, and that, in proportion to the number insured, there were more claims for damages on account of the larger cars. On this point the following figures are illuminating:

Statutory Liability, Experience of Private Passenger Cars, 1927 and 1928.

Classification.	Claim Frequency.	Average Loss.
W (small cars)	6.7	$16.79
X (medium cars)	8.4	20.56
Y (large cars)	9.4	26.54

To place all private passenger cars (and the same holds true of all types of registered vehicles) on the same basis of contribution, ignoring the experience of three years which has fully demonstrated that there is a wide difference in insurable hazard, both as to locality and type of car, would in our opinion be grossly unfair, a retreat from the existing policy of the Commonwealth, both as to workmen's compensation and motor vehicle insurance, that premium rates shall be "equitable."

But there are other inequalities in the contribution schedule established in both bills; for example, they provide that an owner registering his car in the month of June shall pay exactly the same amount as the owner who registers in January or any intervening month. It

is the practice of private insurance companies to prorate their premiums twice in each month, the result being that the premium charged to an owner registering his car in June is only slightly more than one-half as large as that charged to an owner who obtains his policy as of January first. In 1928, 231,633 passenger cars were registered between February 1 and June 30, and under the terms of this bill each one of these would be subjected to discrimination in the matter of contribution charges, and would have to pay a full year's premium.

In the matter of refunds, also, the bills are subject to criticism, in that they permit no return payment to an owner whose registration is for any reason revoked by the Registrar of Motor Vehicles, and no return payment is permitted to an owner who voluntarily surrenders his registration certificate and number plates after July first.

Reports of Accidents.

Another section in both bills provides that the operator or owner of every motor vehicle or trailer involved in an accident shall make report thereof, to the local police, if there be an organized police force in the community where the accident occurred, within twenty-four hours of its occurrence; if there is no local police force, report is to be made within forty-eight hours to the Registrar of Motor Vehicles; in either case the report must be made on a blank to be furnished by the Registrar.

The bills contain no requirement as to the disposition the local police shall make of such a report after receiving it. Nor is any provision included which will enable the owner of a car involved in an accident in a small town in the western part of the state, for example, to obtain the necessary blank on which to file a report of the accident and get it to the office of the Registrar within forty-eight hours. Yet failure to comply with this requirement would subject the owner or operator to the penalty of having his license or registration suspended, and possibly without a hearing.

"Settlements" by the "Fund" Board.

One of the provisions included in both bills in section 34C, to be added to chapter 90 of the General Laws, appears to us to invite the making of "fake claims," a subject treated extensively in another part of this report. While it is undoubtedly true that it is frequently less expensive for an insurance company to compromise a groundless claim, rather than to fight it in the courts, nevertheless, it is incontrovertible that the number of groundless claims filed has been increased by the knowledge that it is possible to obtain settlements in such cases. Yet we find in this section a specific authorization that the board in charge of the "fund" "may settle . . . any claims, suits, or other legal proceedings alleging injuries and demanding damages on account thereof, although such claims, suits, legal proceedings, allegations and demands may appear to be wholly groundless." This would seem to be a standing invitation to claimants who have political influence or who are disposed to "split" any proceeds with an investigator.

Both bills attempt in a later section (34F) to deal with the matter of "fake claims," but this section also contains a provision which to us seems objectionable. This is the provision: that if it appears to the commissioners, or to any one of them, that any person has obtained money from the proposed state fund as a result of any false statement with relation to a claim against the fund, the facts shall be reported to the Attorney General or to the proper district attorney, who shall prosecute the offender. Under this provision, any member of the board, even though his interpretation of the facts lacked the support of the other two members of the board, would be obliged to report the matter in writing to the Attorney General, or a district attorney, and either official might be criticized if he did not institute a prosecution even though he believed it unwarranted.

Insuring Unsafe Risks.

A serious defect in both proposed bills, in our opinion, is the complete lack of provisions looking to greater safety in the operation of motor vehicles. They provide that the board shall enter into a contract of insurance with every person who makes application therefor, regardless of his past record as a motorist.

Under our existing law, an insurance company is permitted to refuse insurance on any risk which it deems undesirable, subject only to reversal of its decision by the Board of Appeal created under section 8A of chapter 26 of the General Laws. The pending bill, however, makes no provision for barring undesirable owners from the highways of the Commonwealth; it leaves the matter exclusively in the jurisdiction of the Registrar of Motor Vehicles, and gives to him no other authority than he has at present.

Boosting Rates on Extra-Territorial and Excess Coverage.

Another feature in connection with these bills which should have the serious consideration of the General Court is that if either bill were enacted into law, motor vehicle owners would still be obliged to resort to private insurance companies for policies covering their liability for limits in excess of the $5,000 and $10,000 provided in the bill, as well as outside of the Commonwealth and in all places except the public highways within the Commonwealth. That the latter form of coverage is desired by practically all motor vehicle owners is shown by the fact that at present approximately 98 per cent of those having policies with a statutory coverage have requested extra-territorial coverage as well.

Under the terms of these bills private insurance companies would be excluded from writing in this Commonwealth policies covering motor vehicle liability within the limits set forth in the bill. They would be per-

mitted to write policies covering extra-territorial liability, and policies for excess limits. But the premium on extra-territorial coverage is only $3 per car, and the premium rates charged on excess limits are also comparatively small.

Obviously, if this form of coverage, which practically every one desires, is to be thus separately written, the premium rates must be measurably increased in order to bear the increased overhead expense and yield a reasonable profit. And even so, *in view of the meagre returns*, in the form of commissions, to be obtained by agents and brokers from the writing of these policies, it is doubtful that either form of business would be solicited on behalf of the companies. And since the passage of this bill would mean the exclusion of agents and brokers from the field of statutory coverage, the result would be that each motor vehicle owner would be compelled to attend personally to all the details of registering and insuring his car, being obliged to go to the registry of motor vehicles, or one of its branches, for statutory coverage, and to the office of an insurance company or one of its agents for additional coverage, which, as has been pointed out above, 98 per cent of the owners of motor vehicles desire. Clearly this would entail loss of much valuable time, and in many cases wages as well.

Absence of Insurance "Service" under the Initiative "Fund" Plan

In a number of the arguments before us, and particularly those in support of a monopolistic state "fund," it was urged that the commissions referred to as "acquisition costs" are an unnecessary burden upon the car owners who are required to insure, and that this item of cost should be eliminated from the rates by establishing a state fund; that no agents would be needed, and therefore there would be no "acquisition costs" to be covered in the state rates because every car owner would be obliged to insure and would get his insurance by paying

to the state authorities the fixed rate established by the state.

It seems to us that one of the serious objections to the state fund idea is based on the assumption that the car owners of Massachusetts do not need and do not want the services of a middleman; that they would prefer to deal directly with the state; and that accordingly they ought not to be charged in the rates for any "acquisition costs."

Theoretically, of course, it is easy to imagine that a man who wants insurance can simply pay the state for it and get it, and that there are no other necessary and convenient services performed by the agents which are to be considered.

We believe that even under state insurance many of the services now performed by the insurance agencies would have to be performed by somebody and paid for in addition to the payment to the state of insurance rates. There would be no state supervision whatever of the amount thus paid, as it would be done in many cases by individuals untrained and inexperienced in this field, and endless confusion and misunderstanding would result.

In such a business as insurance, in which one of the principal expectations of the car owner is not only financial protection, but *service*, the great value of the business principle of competition is that it produces competition in service. The fact that the creation of a state fund would stifle the competitive incentive to better service and reduce service throughout the state to a dead level of inconvenience is one reason in our opinion why the state fund idea is a mistaken one.

We believe that the interests of the public and of the rate-paying car owners in the long run will be better served if the insurance business is treated in a businesslike manner and left in the hands of private companies under proper regulations than if it is treated in what we believe to be the inevitably unbusinesslike manner of creating a state monopoly.

Insurance at Cost.

One of the main arguments used in support of the measure under consideration is that it would "furnish insurance at cost." But it should not be forgotten that "insurance at cost" is and has been available in this Commonwealth since the present motor vehicle liability insurance law was passed, and, in fact, for many years before. "Insurance at cost" is the basic principle on which mutual insurance companies operate; several of those engaged in writing this form of insurance in Massachusetts have returned to their policyholders annually 20 per cent of the original premium paid. It may be well at this point to call attention to the fact that this 20 per cent return is nearly double the amount now allowed the insurance companies for "acquisition cost" which the proponents of the state fund point out as one of its important savings. The suggestion that the state fund would be a "mutual company" is discussed later.

It should be noticed that in section 34A of House No. 225, if the contributions collected during any one year produce a larger revenue than is necessary for the purpose of carrying out said provisions of the act, such excess shall be distributed, *not among the car owners who contributed that year*, but "among the owners of automobiles by lowering rates for the following year."

The car owners of the following year may include persons who did not contribute to this excess, and may not include persons who did, so that the principle of insurance at cost on the mutual basis is violated.

The Inconvenient Position of the Car Owner and the Embarrassing Position of the Commonwealth.

It is perfectly evident that a large majority of our owners of motor vehicles prefer to place their insurance with companies which, through their agents and brokers, furnish a real service to the insured. This service in-

cludes attending to all the details of procuring registration for the owner's car, securing and delivering number plates, explaining details of just what the policy offers, etc., in addition to placing the insurance. In case of accident, the company's agent is expected to take upon himself the burden of assisting in making necessary reports, investigating the facts and settling claims, and it is an item of no small value that some one skilled in this particular field and with interests common with those of the policyholder stands ready to perform this helpful service at a time when it is most needed and appreciated.

None of this service would be available to the insured under the terms of this bill. In fact, an owner whose car was involved in an accident would be buffeted between two agencies of the same commonwealth, each opposed to the other, the representative of one agency seeking to free the owner from responsibility, in order to safeguard the fund from unwarranted claims for damages; the representative of the other urging the same owner's conviction for improper operation of his car. It has become a common practice for claimants to instigate criminal proceedings, not for the public good, but with a view to securing a criminal record which may be used later to discredit a defendant's testimony in a civil suit for damages. This practice would doubtless continue and would place the Commonwealth in a most peculiar position on both sides of a case. It seems to be unlikely that the Commonwealth could at once properly safeguard the fund and at the same time deal justly with all injured persons and with negligent motorists. Furthermore, in adjusting claims growing out of accidents, the Commonwealth, represented by the board in charge of the fund, would be compelled to take sides with one of its citizens as against another.

It seems inevitable that in many cases owners of motor vehicles involved in accidents would be obliged to retain counsel, realizing the conflict of interest on the part of the Commonwealth, and with no insurance com-

pany anxious to serve their interests for their own protection. If there were danger that the verdict might exceed the statutory limits, the car owner would be entirely unprotected unless he had other counsel. In case of two lawyers, one for the state and one for the owner, which one would conduct the case? This is another probable source of inconvenience and expense to owners.

The Loss of Insurance Taxes.

Another feature of the bill which the General Court should have in mind is the amount now collected from insurance companies doing business in this State in the form of taxes on their premiums. Every Massachusetts company turns over to the state treasury 1 per cent, and every foreign company 2 per cent, of its gross premiums. A large majority of the companies writing business in this state are chartered under the laws of other states, and consequently pay to the Commonwealth the maximum tax. In 1928 there was collected for taxes and license fees an amount in excess of $300,000. If this bill were enacted into law, the General Court would be faced with the necessity of curtailing public activities or of obtaining most of the amount from other sources, possibly from the state tax levied upon cities and towns.

All of these are practical objections which, in our opinion, should convince the General Court and the public that this bill is impractical, unworkable and wholly inadequate to meet the real need of the present time.

Inherent Objections to State Funds.

Thus far we have discussed this phase of proposed state fund legislation solely from the standpoint of the practicability and desirability of the measures specifically referred to, including the initiative petition now before the Legislature numbered House No. 202. But the problem has a broader and more important aspect. In our opinion there are inherent objections to state fund legislation in whatever form it may be presented.

These have been recognized by the General Court for many years. No state has ever adopted a state fund with respect to motor vehicle liability insurance.

When the workmen's compensation law of our own state was under consideration by a special commission, it was proposed that the state establish a monopolistic state fund. The commission declined to recommend such a course, but suggested, as a compromise, that a publicly managed monopolistic insurance company be established to collect premiums and distribute benefits. This plan the General Court declined to adopt, but made provision for the creation of a publicly managed company which should enter into competition with the state management feature abandoned.

The proposed company was duly organized, and its management was placed in the control of a capable board of directors. But within a few years it came to the General Court with a request that it be permitted to engage in other lines of business, admitting that it could not compete successfully with private companies unless, like its competitors, it were permitted to extend its activities. The relief sought was granted by the Legislature, but, even after being placed on an equal footing with the private companies, the publicly managed company was unable to survive the competition, and eventually was transformed into a mutual company under private control.[1] As such its financial condition speedily improved, and it is now one of the well-established and successful companies engaged in writing workmen's compensation and liability insurance in this state.

The "Fund" Plan is not a "Mutual Insurance Company."

The proposed compulsory monopolistic state fund plan was described in argument by one of its supporters as a state "mutual insurance company," but this is an entirely mistaken notion, as the plan violates the first

[1] Now called the "Liberty Mutual Insurance Company."

principle of a mutual company which is a purely voluntary association of individuals without any monopoly or compulsion, for the purpose of insuring each other at cost. As is commonly known, it is the practice of mutual companies to return to their members at the end of a year such part of the premium collected at the beginning of the year as was not needed for the purposes of the business. If the premiums collected are not sufficient to meet the losses and other expenses of the business, each member of a mutual company is personally liable for a share of the deficit, but this is a liability which he voluntarily assumes when he insures in a mutual company. He becomes of his own free will a mutual insurance adventurer to the extent of such possible liability. In the case of a large and properly managed company conducted by experienced men, this is a safe risk which many persons prefer to take in order to get their insurance at a lower cost than they can get it in the stock companies which do not return any of the premiums at the end of the year, and which do not involve any contingent liability of the car owner for unexpected losses. If the company is not well managed it is a dangerous risk as is shown by the recent failure of three mutual companies having in all about 60,000 policyholders.

But as soon as the monopolistic and compulsory features are introduced the whole idea of a mutual company disappears. It seems to us questionable whether the Legislature can constitutionally require a person to assume and pay in one year for losses of other persons in a previous year as a condition of the right to register his car for use on the highways of the Commonwealth. To require, as the present law requires, that car owners shall provide adequate insurance coverage, leaving it optional with them as to the kind of company in which they choose to insure, is one thing; but to require such coverage and compel every car owner, in order to get it, to become a joint adventurer in an insurance business so that in order to register his car he must assume a share of the

losses of a previous year or years, is a very different thing. It does not seem to us a requirement which is incidental to the power to regulate the use of highways. It goes much further than the power to put the Commonwealth into business, because, if the Commonwealth has the constitutional power to go into the insurance business in a businesslike way, it can adopt some plan of competitive state insurance fund. But a compulsory monopolistic state fund not only assumes the power of the state to go into business on behalf of the taxpayers and with the taxpayers' money as a fund to borrow from, but it further assumes the power to force the car owners of the state to assume part of the contingent liabilities of that business for one year as a condition of securing a permit to use the highways the next year. This double form of compulsion, if constitutional, seems to us to be poor business.

Extending the Opportunity for "Fake" Claims.

As already pointed out, the state fund bill provides (section 1) that actions arising out of motor vehicle accidents may be begun at any time within six years after the occurrence of the accident. Insurance companies and car owners complain that they are subjected to disadvantage because the statute of limitations now permits such actions to be begun at any time within one year because unscrupulous claimants and their attorneys are thereby given an opportunity to "build up" fictitious claims which have to be covered by the rates. Certainly a state fund would not be less susceptible to this form of claim. In view of the common human tendency to get money from "the state," it is probable that the contribution charges needed to meet losses and costs of operation would be measurably increased. To permit claims to be paid after a lapse of more than six years from the time the cause of action arises would, in our opinion, be an injustice to the motorists whose cars were registered in the year follow-

ing the settlement of such claims. It would mean that those of the latter year would be compelled to bear a burden of expense which should have fallen upon those registering their cars six years before.

The Importance of Stability.

In case of any delay in payment of judgments, because of a shortage in the "fund," plaintiffs holding executions would naturally levy upon property of the unfortunate car owner who had contributed to the fund for protection against exactly that thing. We do not think car owners who have to buy insurance want to invite any such situation by these so-called "state fund" bills.

Success in the insurance business, whether it is undertaken as a private or a public business, depends largely upon stability and efficiency. Three Massachusetts mutual companies have recently been closed because they were insolvent. In the address already referred to former Commissioner Clarence W. Hobbs pointed out that the West Virginia Workmen's Compensation State Fund, the second largest monopolistic state fund, is in a precarious financial condition. The Porto Rico State Fund demonstrated instability and last year lost its monopoly. The trouble with the Porto Rico fund seems to have been bad management and politics, resulting in rates probably inadequate. We are informed that the Washington (state) fund has experienced a variety of troubles which have on occasions necessitated payment of loss by warrant instead of by cash because of shortage of State funds. In the handling of pension funds states have not infrequently ignored the necessity of setting up adequate reserves. This was demonstrated in California and in Minnesota, where deficits of many millions of dollars in the reserves appeared.

In the report of the special commission appointed (Resolves of 1926, chapter 36) to investigate the operation of the Workmen's Compensation Law it is pointed out that —

Since 1913, that is, for more than twelve years, only one State, North Dakota, and one territory, Porto Rico, have adopted a monopolistic state fund. At that time there were six in operation, — Nevada, Ohio, Oregon, Washington, Wyoming and West Virginia. Porto Rico adopted one in 1916. North Dakota adopted one under its non-partisan régime in 1919. Neither would seem to be strong precedents for Massachusetts to follow.

The passing from existence of seven of the eight Bank Deposit Guaranty Funds indicates another cause of instability. These funds (Kansas, Mississippi, Nebraska, North Dakota, Oklahoma, South Dakota, Washington and Texas) operated for a time successfully, but economic depression and a wave of bank failures drove all but one of the funds out of existence.

Stability necessitates maintenance of proper reserves for the protection of policyholders, as is done by private insurance companies. Rates to be charged must be adequate for this purpose. An increase in rates is never a popular move (as has been demonstrated in Massachusetts each year since the present law became operative), and, because of the political considerations necessarily involved, it would be much more difficult for the state to maintain rates at an adequate level than it is under the present system.

As has been pointed out in connection with the publicly managed company organized under the Workmen's Compensation Law, a company restricted to a single line of business cannot compete successfully with multiple-line companies writing business all over the United States. Any state fund established in this Commonwealth for the purpose of insuring liability for damages caused by motor vehicles would be restricted to coverage wholly within the Commonwealth and within such limits as to amount of coverage as the General Court may fix. In our opinion a fund so limited in its field of activity would find itself in difficulties, with no possibility of relief such as was given to the Massachusetts Employees Insurance Association (such as the authority to write other lines of insurance). Only two sources of

relief would be available, — either the rates would be measurably increased, or the General Court would be obliged to subsidize the fund and assume all deficits.

The great advantage which private insurance companies have over state funds lies in their efficiency, surplus and reserves, and in their service, both to injured persons and to policyholders. The state, under a monopolistic state fund, lacks the incentive of competition to better its service or make it effective.

In the period from 1920 to 1925, during which companies writing workmen's compensation insurance developed a regular and healthy increase in their volume of business, monopolistic state funds showed a marked diminution in the aggregate amount of premiums received.

The speed with which claims are adjusted, the effectiveness of medical service, the skill of inspectors and trained employees, cannot in our opinion be equaled by a state organization with new and inexperienced and generally underpaid officials and employees. Such savings as might result from abolishing duplicate organizations would be more than offset, in our opinion, by lack of efficiency and service.

In our opinion the only substantial saving which would be effected under a state fund plan, as compared with mutual insurance, would be the single item of taxes now paid into the treasury of the Commonwealth for public purposes, and if these were eliminated the loss in revenue could be made up, as we have previously pointed out, only from an additional levy in the state tax. With respect to stock companies, the only additional saving would be in the matter of commissions paid to agents and brokers, but, as has also been pointed out, most owners of motor vehicles prefer to pay this additional amount in return for the service rendered.

The proposal that state funds be established in this Commonwealth has been repeatedly rejected by the General Court, and it has been discussed in the reports of several commissions and committees created by the

General Court, each of which has rejected the idea, usually with unanimity. In this connection it may be well to call again to the attention of the General Court the language found in the report of one of these commissions.

Strong language is found in a report (Senate 322 of 1920) of the special commission of which Henry A. Wyman, then Attorney General of the Commonwealth, was chairman. In that report it was said:

> The resolve required a report on the question as to whether a state insurance company would furnish the best method of providing said insurance. Much has been written on both sides of the question of state insurance, but for the purposes of this report it is perhaps sufficient to consider the matter summarily.
>
> State insurance has been tried in this country and elsewhere, especially in connection with the administration of the workmen's compensation act, and therefore there is a certain basis of fact upon which to predicate our conclusion. There has to date appeared no substantial advantage in the transaction of insurance by a state insurance company over the transaction of insurance by private companies. Where the state fund has been in competition with private insurance companies the private companies have had no difficulty in holding their own, which certainly argues that there is no advantage in the matter of expense that may not be counterbalanced by other considerations. Theoretically, a reduction of expense is possible, especially in the case of an insurance monopoly, but this result is entirely artificial if a reduction is made at the cost of service.
>
> The reason for this seems to be one inherent in most state operations, and is, first, the inability of the state to attract and hold in its service men of large caliber; and second, the unwillingness of legislators to provide sufficient funds, or to free the fund from the restriction of the cumbrous state financial machinery. The first condition has resulted in several of the state funds, in loose methods of business, insufficient service, and vexatious delays in paying claims from the fund. The second is in part responsible for these results because of the officials not having sufficient money with which to provide the service.

The Importance of Reserves.

It should be noted that during the three years that have elapsed since the present law became operative there has been a constant upward trend in the amounts paid out by insurance companies on account of claims arising under the act. In some cases the deficits charge-

able to previous years are substantially increasing because reserves for unpaid claims have been inadequate, though the reserves set up have been greater than required by law. Unless the safety-responsibility amendments recommended by this Commission are adopted (and the state fund bill now under consideration contains none of these), this trend seems certain to continue, and the "contributions" specified in the bill would become increasingly inadequate to meet the payments which would be required under the provisions of the proposed bills.

Compulsion and Prohibition.

We think it would be wrong to force every car owner to buy of the state if he desires to buy somewhere else. Insurance is no more a natural monopoly than clothing or food or the banking business. In spite of the many activities of a modern state, the strength of this country is still based on the philosophy of minding one's own business, and the dictatorial tendencies of compulsion in one direction after another are opposed to sound development. If the state begins to take over one private business by a system of compulsion, why should it start and stop with the insurance business? Where would this compulsion policy end?

This is a problem not of socialism or any other "ism." It is a question whether private imagination and initiative in the gradual development of better insurance service are to be suppressed by compulsion, and whether the citizens who want insurance service are to be forced into political activities to get it, and prevented from getting it in a businesslike way where they prefer to get it and can get it more conveniently. We maintain that the citizens of Massachusetts have a right to buy private insurance, and that while the state may, perhaps, have the power to prohibit them from so doing, it has no moral right to use this power. Might does not make right, and the successful development of American government thus far, like the development of strength of

character in an individual, has been the result of restraint in the exercise of great powers.

We have emphasized this aspect of the initiative insurance plan because we believe that many people think vaguely about the plan, and do not realize that it would prohibit them from doing their business conveniently as they do it now, and would compel all those who wished more than the required amount of insurance to buy it in two different places, and subject them to the annoyance of being "protected" and defended and represented by two sets of lawyers and investigators, one set for the state and one set for the insurance company.

The state requires its citizens to wear clothes on the street, and to a certain limited extent even on the stage, or at least the state would lock them up if they did not, but it does not follow that the state may "properly" establish a state clothing monopoly to "supply its citizens" with the clothing which "it requires" them to wear and force them to buy their clothes of the state. Yet the requirement that clothes be worn in public applies to all citizens except babies, while the requirement of motor vehicle insurance applies only to a part of the citizens. We see no more justification for requiring a man or woman to buy state insurance, when he or she prefers to buy private insurance in a responsible company, than there is for requiring a man or woman to buy all his or her clothes of the state. If there is legislative power to make such a requirement, we believe it is one of those powers, like the power to move the State House dome into the Frog Pond, which should not be exercised.

DRIVER INSURANCE.

Senate No. 131 and Senate No. 173 may be grouped together for purpose of this discussion. Both are based on the untried principle of the driver form of liability insurance.

Senate No. 173 would amend those sections in chapter 90 and the General Laws, by striking out all references to "owners" of motor vehicles and trailers being required to

furnish security for civil liability on account of personal injuries, and substituting therefor the word "operator" of such motor vehicles, in the sections referred to.

Senate No. 131 is more complete in text. It would also place the proof of security on the operator. The bill is drawn quite closely along the lines of the present law, although the optional privilege of depositing cash or securities, in lieu of an insurance policy or surety bond, is omitted. The certificate of insurance would, under the bill, be issued at the same time as the operator's license and run coterminously with it.

In discussing this untried method of protecting the public against the financially irresponsible operator, the following problems arise. First, the rates on such coverage would have to be fixed in an arbitrary manner, which would be largely guess work, as some form of individual merit-rating plan would of necessity have to be adopted. There is no insurance experience to be used as a guide.

As the exposure would be very small, all individual driver's rates might have to be classified in accordance with the type of the operation which the driver performs. At present we have but one class of operators, but under this scheme of insuring the driver, in order to make a non-discriminatory premium charge and without a sufficient exposure on which to base such a charge, several new classes of operators might have to be created.

Classification might, perhaps, be based on the average number of miles driven annually, *i.e.*, those who operate a car five thousand miles or less in one year being placed in one class, and those who operate a car more than five but less than ten thousand miles annually in another class, and so on. But then we would have the complication of the bus driver, the taxi driver, the truck driver and possibly others, all of whom might require separate classifications. It would also be difficult to require operators of cars to confine their driving activities wholly within the class for which they were licensed and insured.

We also must consider the families with only one car, but with several members of the household operating it. The additional cost to the family of insuring each member

who drove the car would, without question, exceed the cost under the present law whereby the car alone carries the insurance. This result does not seem to us one that would be likely to please the motoring public. If a family driving "group" policy should be adopted we see no reason to suppose that it would be any cheaper than the present plan.

Undoubtedly most responsible persons, particularly the owners of property, would feel the necessity of continuing with the present form of insurance on the car as an added financial protection against accidents. They would be obliged to do this for their own protection, especially if others than themselves, such as their chauffeurs, or their children, or their bus or truck drivers, were to continue to operate these machines. In case of accidents the question of agency would arise, and, although the operator of the car would be covered, yet the master would still be liable for the acts of his servant. Thus double insurance, with the added inducement to ingenious claim makers, would be forced on many car owners.

Another apparent weakness appears in this "operator" form of compulsory insurance and the difficulty of its enforcement. There would be no insurance indicated, as it is now, by number plates. It would be necessary either to wait for an accident or stop each car and inspect the driver's license in order to be assured that the statute was being complied with. Probably there are other difficulties which we have not thought of.

Except in the case of publicly owned cars, which we have discussed elsewhere, we see nothing to be gained by experimenting with this complicated plan of "driver" insurance.

"SAFETY RESPONSIBILITY" BILL

(House No. 990 of 1929, on petition of Representative Edgar F. Power.)

This is one of the bills referred to this Commission. It was vigorously supported by representatives of insurance interests at the last session and at the hearings

before this Commission. It is one of the "financial responsibility" bills, based partly on the Connecticut and partly on the New Hampshire practice.

We do not recommend this bill. In addition to general reference to it elsewhere, we call attention here to one feature of it. Section 7 provides for a preliminary hearing on a petition to the court that the defendant in an action for damages caused by a motor vehicle be required to furnish evidence of security to satisfy the judgment. This plan is based on the New Hampshire law of 1927, which was amended in 1929 to allow an alternative petition and hearing before the Commissioner of Motor Vehicles. We learn from the Insurance Commissioner and the Commissioner of Motor Vehicles of New Hampshire that it has worked satisfactorily there thus far.

There are, however, no available experience data to show how many applications to the court there have been in New Hampshire, or how many, if any, injured persons have been unable to collect damages because of lack of insurance. There are only about 107,000 motor vehicles registered in New Hampshire, as compared with more than 800,000 in Massachusetts. Traffic problems differ in the two states. No figures are available to show how many of the registered cars in New Hampshire have been insured as a result of their law.

The reason for the passage of our Massachusetts law in 1925 was that it was the common estimate that about 70 per cent of Massachusetts cars were uninsured, and that a large proportion of this 70 per cent of car owners were financially irresponsible, so that judgment could not be collected from them by injured persons. If we should repeal the present Massachusetts law and substitute House No. 990 (of 1929), or something like it, doubtless many persons who have developed the habit of insurance under the present law would continue to carry insurance, but one can only guess as to how many of them would do so. Probably many of them would not do so and the number of these would be large.

To burden our already crowded courts with such preliminary hearings as are provided for by section 7 would involve a double hearing in many cases; first, on the application for security, and second, on the merits. We have too many cars and too much litigation now to provide such a system, but we have suggested other methods of dealing with litigation under our present law which we believe would be more effective in Massachusetts. Our Registrar of Motor Vehicles also has too much to do now without burdening him with such preliminary hearings.

THE PEDESTRIAN PROBLEM.

This Commission is fully aware of the problem of careless pedestrians. It can never be entirely solved, either by statutory or mechanical devices. Carelessness and negligence are both human elements, common even to the most thoughtful individual. No law or mechanical device will prevent the pedestrian as well as the motor vehicle operator from indulging in moments of undirected movement, and one second of such mental abstraction is quite enough to cause a tragedy.

Children are frequently thoughtless, and their carelessness creates a serious hazard to themselves and to the operator of a car. It is commonly believed that juries often bring in their verdicts in favor of the injured pedestrian, even though there is evidence of contributory negligence on the part of such pedestrian. This is particularly true where a child is injured.

As to cases of the very young children rushing into the street in their play and thereby unwittingly offering themselves as additional victims to even the careful motorist, it has been suggested to us that it might be a good plan for parents to restore the old front yard fence and require these children to play out of and away from the traveled highway. A return to a former, but now fast disappearing, method of parental coercion might also aid in solving this problem of safety far better than any form of legislation. These accidents to children are far too

common, and are most regrettable, yet in our opinion the motor vehicle driver frequently suffers as a victim of circumstances which he cannot prevent. We commend most of the work being done by all those agencies in the Commonwealth dealing with the question of "jay walking" and other questions of pedestrian safety and control. We realize that the appalling number of accidents to pedestrians will undoubtedly continue, and every effort must be exerted to keep the number reduced to a minimum. Much, however, is laid at the door of the motorist for causes over which he has no control and for which we believe he often suffers unjustly. We feel that in justice to him attention should be called to the common negligence of pedestrians as an important cause of motor vehicle accidents. We suggest that the General Court give serious consideration to the pedestrian problem in congested cities.

"CARD INDEX" PLAN

(House Bill No. 94 of 1929, on petition of Honorable William S. Youngman.)

This bill (which is among those referred to this Commission) would require the filing by the companies, with the Commissioner of Insurance, of certain data regarding the settlements of all motor vehicle accident cases in which a personal injury or death resulted. This data would have to be filed in a prescribed form within ninety days after payment was made to the injured parties, or to the heirs of the deceased, in case of a death, and would be open for public inspection. Certain compilations from this data would be prepared by the Commissioner and turned over to the Governor at the end of each fiscal year. The purpose of the bill is to provide more public information as to the nature of the claims made and paid.

We are not sure that it is advisable to add to the present extensive files of the insurance department these annual reports on 45,000 or more claims. We think if our recommendations for sifting claims are adopted there may be less occasion for this mass of reports, but if it should

appear to be desirable the Commissioner (or the Rating and Control Board) could call for them under the existing law as the Commissioner did last summer as to claims which were charged to the loss experience of Chelsea, Revere and Lynn in 1927 and 1928. Accordingly, we think this matter may be left to the discretion of the Commissioner (or the Board) without further legislation.

C. WESLEY HALE, *Chairman.*
ALBERT F. BIGELOW.
CLYDE H. SWAN.
DANIEL J. COAKLEY.
FRANK W. GRINNELL.
RUSSELL A. HARMON.
C. CRAWFORD HOLLIDGE.

APPENDIX A.

HISTORY AND OPERATIONS OF THE MASSACHUSETTS AUTOMOBILE RATING AND ACCIDENT PREVENTION BUREAU.

WORKMEN'S COMPENSATION LAW.

Before discussing the operations of the Massachusetts Automobile Rating and Accident Prevention Bureau it is necessary to review briefly the history of the collection of information and statistics under the Workmen's Compensation Insurance Law,[1] as the Bureau formed under that law is the basis for the organization of this Automobile Bureau.

The Workmen's Compensation Law was originally passed in 1911 and went into effect July 1, 1912.[2] It required insurance companies writing Workmen's Compensation Insurance to file with the Insurance Commissioner their classification of risks and premiums, which were not to take effect, however, until "approved" by the Insurance Commissioner as "adequate" and "reasonable" [3] for the risks to which they respectively applied.

WORKMEN'S COMPENSATION REPORT OF 1915.

In 1914 the Governor appointed a commission of three,[4] one of whom was the Insurance Commissioner, Mr. Hardison, to investigate the practices of insurance companies and their rates in Workmen's Compensation Insurance. This commission organized in September, 1914, and made its report to the General Court April 22, 1915.[5]

This report, hereinafter called the Workmen's Compensation Report, goes very fully into rate making under Workmen's Compensation Insurance.

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[1] G. L., c. 152, as amended.

[2] Acts of 1911, c. 751.

[3] "Reasonable" added, Acts of 1927, c. 309, § 11.

[4] Resolves of 1914, c. 160.

[5] Report on Workmen's Compensation Insurance of the Commission to Investigate Practices and Rates in Insurance, 1915.

A combination of nearly all the stock companies exists for the purpose of making rates from their combined experience, regulating agents' commissions, developing and operating a uniform merit-rating system, and other uniform practices for the companies of which the combination is composed. But this fact should not be regarded as opposed to public interest, for it is well understood that combinations for rate-making purposes are not inimicable to the general welfare, provided they represent a purpose to make just rates free from improper influences, and are regulated and supervised by governmental authority. In fact, the necessity of rate-making bureaus, as these combinations are called, has been fully recognized by every Commission which has investigated and studied the subject in recent years. Investigating commissions authorized by the Legislatures of the States of New York, Wisconsin, Illinois, Pennsylvania, North Carolina and Missouri have all given special attention to this subject within the last few years, and Pennsylvania and Missouri within the last few months, and have practically unanimously either recognized or affirmed the necessity of rate-making bureaus under adequate and proper state regulation. A rate-making bureau may, however, if not regulated and restricted in its operations, develop into an improper combination.

Where rate making has not attained to such scientific accuracy that every underwriter knows what the proper rate should be, history shows that open competition in rate making for such classes of insurance has been found injurious to the public, and because of the limited experience which any one company can acquire it is necessary that the experience of the companies be combined for the purpose of making rates which will conserve the interests of insurers and the public.

This conclusion is held generally by those who have studied the subject, and this Commission is in full accord with the conclusion that bureaus established for the purpose of making insurance rates from the experience of many companies are, when properly supervised by state authority, a benefit rather than a menace to the public welfare. But here it should be said that Massachusetts has now no law giving any state official power to examine a rate-making bureau or supervise its work, — a condition which should be remedied. (Workmen's Compensation Report, pp. 14, 15.)

At that time most of the stock and mutual companies doing business in Massachusetts were members of the Workmen's Compensation Service Bureau of New York.

This New York Bureau was organized in December, 1910, and made the original compensation rates used by the stock companies in Massachusetts.

> The rates as fixed for Massachusetts were largely the result of a compromise among members of the [New York] Bureau, based partly upon the results of their few months' operation under the New Jersey law. In short, the first rates used in Massachusetts as in New Jersey were a "guess," tempered by the very limited experience available in different forms. (Workmen's Compensation Report, p. 17.)

The principal purpose of this New York Bureau was to gather statistics and make rates for all lines of liability insurance, including Workmen's Compensation Insurance.

The expenses were apportioned equitably among its members.

Referring to the work of this New York Bureau the commission states:

> But such a bureau cannot in a new line of rate making like that for Workmen's Compensation Insurance become full-fledged all at once. Its work can be developed tentatively, based upon judgment when no experience is available, but correct rates can be made only upon sufficient experience to constitute an average to which must be applied an unbiased and well-informed judgment. Although experience was lacking when the Workmen's Compensation Act went into effect in Massachusetts, rates had to be assigned, and for the most of the stock companies it was done in the name of the Workmen's Compensation Service Bureau. (Workmen's Compensation Report, p. 18.)

Later a Massachusetts local rate-making bureau was formed called the "Massachusetts Committee," composed of Bureau and non-Bureau stock companies, with the controlling vote, however, in the Bureau companies. This Massachusetts Committee submitted its proposed rates to the Manual Committee of the New York Bureau, which had the final word.

This arrangement continued until January, 1914, when the New York Bureau, as a result of a violent disagreement among its members over rates, gave to the Employers' Liability Assurance Corporation, Limited, of London, located in Boston, the sole authority to make rates in Massachusetts. The rates made by this company became the rates of the Massachusetts Committee.

The commission disapproved of this practice and discussed the question of the state's supervision and regulation of rates.

> The general question of state *versus* private superiority in carrying forward business enterprises is one that has been discussed for many years by many persons, and this Commission assumes that the

General Court and the public generally are acquainted with the arguments relating thereto. It assumes that the question being considered is not essentially different from the general one. It will not, therefore, rehearse those arguments here, but instead will state its belief that the state should not undertake to perform any function which it is not clear that it can administer better and cheaper than private enterprise. It has not discovered any evidence that demonstrates that the function of rate making would be better carried on by the state, although it does believe that that work should be supervised and regulated by the state, just as the other operations of insurance companies are supervised and regulated by public authority. In this way private enterprise and initiative and brains and capital are enlisted in the service. The motive may be private profit, but the public gains in the end where private means carry on business enterprises, if they are properly looked after by the state.

It is the conclusion of the Commission that if Workmen's Compensation Insurance is to continue to be furnished by private companies, the rates therefor should be worked out by some organization or organizations established or employed by all the insurance companies, and paid for by them and approved by the state; that such manual rates for Massachusetts should be based, as far as practicable, on statistics derived from Massachusetts experience; . . .

These organizations or bureaus, whether one or more, should be placed under the supervision of the Insurance Commissioner, and the same duty to examine them be placed upon him as the laws now impose for the examination and supervision of insurance companies. . . .

The Insurance Commissioner should retain authority to pass upon the adequacy of the rates made for use in this Commonwealth, and no rates should be used here until they have been filed with him. (Workmen's Compensation Report, pp. 40, 41.)

In this connection the commission recommended legislation providing for the establishment of a bureau by the insurance companies engaged in Workmen's Compensation Insurance, which should gather and collate information and statistics concerning industrial accidents for the purpose of establishing rates to be charged for this insurance.

On April 26, 1915, the Workmen's Compensation Report was transmitted to the General Court by the Governor (Senate, No. 543), who recommended among other things that a rate-making bureau as suggested by the commission be established.

The matter was referred to the Joint Committee on the Judiciary, who reported favorably on the recommendation (Senate, No. 580), but the bill failed to pass May 21, 1915.

ORGANIZATION OF MASSACHUSETTS RATING AND INSPECTION BUREAU.

Upon the failure of this proposed legislation, the Insurance Commissioner, Mr. Hardison, who had been a member of the Commission on Workmen's Compensation Insurance, invited the insurance companies authorized to transact this kind of insurance business in Massachusetts to meet at the State House June 18, 1915.

Representatives of six of the more important insurance companies attended this meeting and adopted the following vote:

Voted, That the duly authorized representatives of the insurance companies engaged in the business of Workmen's Compensation Insurance in Massachusetts in conference assembled hereby authorize the Insurance Commissioner of Massachusetts to select and appoint a committee of seven members, consisting of three stock companies, three mutual companies and a representative of the Massachusetts Insurance Department, which committee shall forthwith prepare a plan of the organization of a bureau in the Commonwealth of Massachusetts in conformity with the intent of, and to be maintained substantially for the purposes set forth in, Senate Bill 580, reported by the Joint Committee on the Judiciary, to which was referred the message from the Governor transmitting the report of the Commission to Investigate Practices and Rates in Insurance. Said committee shall report at an adjourned meeting of this conference to be held in Boston on July 8, 1915, and shall submit a copy of its plan, including a proposed set of by-laws, to each company transacting Workmen's Compensation Insurance in Massachusetts at least seven days prior thereto.

Several preliminary meetings were held, and on July 8 the constitution of a proposed bureau, to be called the Massachusetts Rating and Inspection Bureau, was submitted. A number of the articles of the constitution were adopted, and on July 13, 1915, the constitution as a whole was adopted, as well as the following resolution:

Resolved, This conference of companies recommends to the Massachusetts Rating and Inspection Bureau, when formed, the consideration of the adoption for use in Massachusetts of the plans of schedule and experience rating now in effect in the Workmen's Compensation Service Bureau, subject to such modifications as may be agreed upon by a committee of conference, comprising representatives of the Massachusetts Rating and Inspection Bureau and the

Workmen's Compensation Service Bureau. The committee of conference to consist, on behalf of the Massachusetts Rating and Inspection Bureau, of two mutual companies, two stock companies, and an employee of the Massachusetts Insurance Department, and on behalf of the Workmen's Compensation Service Bureau, of three persons.

The Insurance Commissioner, Mr. Hardison, was present at all these meetings and acted as chairman of the meetings of July 8 and 13.

At a meeting of the Massachusetts Rating and Inspection Bureau on July 30, 1915, a general manager was appointed.

Constitution of Massachusetts Rating and Inspection Bureau.

A few of the important articles of the constitution of the Massachusetts Rating and Inspection Bureau are here cited:

Article II. Objects.

The objects of the Bureau shall be:

1. To gather and collate information and statistics of accidental injuries for the purpose of establishing basic pure premiums for Workmen's Compensation Insurance.

2. To establish pure basic premiums and rules, regulations, and plans to adjust the same equitably to the hazard of individual risks by means of a system of debits and credits, based upon inspections and experience by the Bureau.

4. To furnish upon request to any employer information as to the pure premium for his risk, including the method of its computation, and to encourage employers to reduce the number and severity of accidents.

Article III. Membership.

1. Any insurance company authorized to transact the business of Workmen's Compensation Insurance in the State of Massachusetts shall be entitled to membership. . . .

Article V. Organization.

5. All Committees of the Bureau shall be composed of an equal number of stock and mutual companies.

10. The General Manager, the members of the Governing Committee, the Manual Committee and the Safety Inspection Committee, elected by the Bureau, shall be subject to approval by the Massachusetts Insurance Department.

ARTICLE IX. GENERAL MANAGER.

4. The General Manager shall file with the Massachusetts Insurance Department, on behalf of the Bureau, the manual of rules, classifications and basic pure premiums, plans of schedule or physical rating, plans of experience rating or other plans for the modification of basic pure premiums and rates, and of amendments in the aforesaid rules, classifications and basic pure premiums, and plans which are required to be filed with the Massachusetts Insurance Department under the provisions of the statutes.

ARTICLE X. MASSACHUSETTS INSURANCE DEPARTMENT.

The Bureau shall file with the Massachusetts Insurance Department a copy of its Constitution and all amendments thereto, under which the Bureau operates, together with such further information concerning the Bureau and its operations as may be required by the Insurance Commissioner. The Bureau shall be subject to visitation, supervision, and examination by the Insurance Commissioner whenever he shall deem it expedient. The Insurance Department shall be notified of all meetings of the Bureau and its committees, and shall be entitled to attend all such meetings.

ARTICLE XV. RATES.

2. Policies issued by members of the Bureau to cover workmen's compensation risks, either new or renewal, shall not be issued at rates lower than those which have been approved for such members by the Insurance Commissioner, as classified and adjusted by the Bureau.

OPERATIONS OF MASSACHUSETTS RATING AND INSPECTION BUREAU.

A committee of the Bureau started in August, 1915, to prepare a revision of the Workmen's Compensation Insurance rates. This committee learned that the Workmen's Compensation Service Bureau of New York and the Compensation Inspection Rating Board of New York were also planning to revise their rates in the near future. Joint conferences were therefore arranged and the work of revision was begun in late September, 1915.

The method of procedure of this New York conference was as follows:

> Its method of procedure here was to establish the loss cost for each classification by the experience available, supplemented by judgment where the experience was too small to be of value, or

where it appeared to be abnormal, or where the grouping of analogous risks was impracticable or unsatisfactory. The committee voted that in view of the extent and volume of the officially recorded compensation experience in Massachusetts, as compiled in Schedule Z, consideration should first be given to Massachusetts experience in the determination of the loss cost, or basic pure premiums, meaning thereby the cost for injuries in any classification per $100 of pay roll on the basis of the original benefits under the Massachusetts law; second, to the experience of New Jersey, Illinois, Michigan and Wisconsin. (61st Annual Report of the Insurance Commissioner, January 1, 1916, Part II, p. xiii.)

The conference reported after two months of work:

The results of the work of the New York Conference concerning basic pure premiums were brought back to the Massachusetts Bureau for independent consideration and action. The Massachusetts Insurance Department also gave special consideration to the basic pure premiums, aside from the fact that it had a representative who participated in their making, for while it believed that in almost all cases those adopted by the conference were correct, judged from information then available, yet in a few cases it felt that more weight should be given to special Massachusetts conditions, and therefore that the basic pure premiums as developed by the conference for this state should be changed in certain cases. In some classifications the department recommended a reduction and in others an increase. These recommendations were adopted by the Massachusetts Bureau. (61st Annual Report of the Insurance Commissioner, January 1, 1916, Part II, p. xiv.)

The result of this New York conference was that new rates were put into effect by the Insurance Department after careful study.

The Insurance Commissioner, Mr. Hardison, in this same report of January 1, 1916, refers to the Massachusetts Rating and Inspection Bureau as follows:

The change [*i.e.*, changes in articles of the constitution of the Bureau] of most importance eliminates the provision for the making of rates. The Bureau's functions now will be to ascertain the proper loss cost, or pure premiums, for the various classifications from the experience of all the companies, and to adopt and apply a schedule rating and an experience rating system. In fine, it is to be a service and not a rate-making organization. To the pure premiums thus worked out by the Bureau, if approved by the Insurance Commissioner, there will be added an expense factor to be fixed by the

Insurance Commissioner, which, with the loss cost, will constitute the manual rate or premium for each classification, which will be increased or decreased for each employer according to the merit of his plant and to the experience in respect to personal injuries suffered by his workmen in the course of their employment.

The work of ascertaining the proper loss cost for each classification from the experience of the companies as far as experience is sufficient is in no proper sense rate making; it but ascertains and makes available the material for rate making. Inasmuch, however, as a great majority of the classes in the manual have not yet shown sufficient experience to serve as a basis for rate making, judgment will have to be employed to a large degree. This might be considered as making rates in combination while the needed experience is lacking if the Bureau had authority to put such judgment rates in force; but it has not. They must first be approved by the Insurance Commissioner, who also fixes the expense element to be added. The Bureau, therefore, cannot be said to be making rates which the public must accept or remain uninsured.

All the companies engaged in a general Workmen's Compensation business in Massachusetts are now members of the Bureau. That its operation will cost something is evident; and that expense will be thrown upon the public.

The work of the Bureau, however, if not carried on by the companies in co-operation will have to be done by the state at public expense, for rates adjusted to hazards are the only equitable rates. Rules for such adjustments must be made and obeyed. Inspections are necessary. Schedules of hazards must be worked out and equitably applied. The numerous rate questions daily arising must be considered and the proper answers given. In fine, to cause 25 companies to work together in such a uniform manner that each insuring employer in the state will be given the proper credits and charges in the application of schedule rating to the manual rates, and in the classification of risks and audits of pay roll, calls for some outlay, whether the companies furnish the means and men or the Commonwealth does it. It is estimated that the expense will be about $40,000 annually, which will be about 1 per cent of the premiums collected in this Commonwealth.

It cannot be too strongly emphasized that the fundamental basis for making insurance rates is experience, — carefully collected, judicially classified and properly tabulated experience. Lacking that, rates are at best based on somebody's judgment. Experience rates are, of course, preferable to judgment rates, even if the latter are made by experts without bias. But experience rates to be reliable must be based on sufficient exposure to obtain an average of the happenings of the contingency insured against. (*Pp. xx, xxi.*) (The italics are ours.)

In the 62d Annual Report of the Insurance Commissioner, January 1, 1917, Part II, the Commissioner, Mr. Hardison, again refers to the Massachusetts Rating and Inspection Bureau, as follows:

> The company Bureau has now been in existence for a period of nearly two years. On account of the numerous changes in rates which have taken place during the past year, and on account of the difficulties of having the twenty-five companies transacting business in the state live up to the same rules in the proper spirit, the Bureau has not been able to make the necessary adjustment of rates, on account of modifications due to the application of the Schedule and Experience Rating Plans, as promptly as could be desired. The management of the Bureau has recently been reorganized, and it is expected that in the future it will be in a position to do its work much more efficiently.
>
> Were it not for the maintenance of this Bureau by the various companies transacting business in the state, it would be necessary for the Commonwealth to maintain a larger division in the Insurance Department to provide that the Physical Rating Schedule and Experience Rating Plan be uniformly and justly applied by all insurance carriers.
>
> Thus the maintenance of the Bureau by the companies effects a large saving in expense to the Commonwealth. The department, by having representatives attend committee meetings of the Bureau, and by checking up physical rating inspections, is able to keep in touch with the affairs of the Bureau, and to exercise a close supervision in an efficient manner. (Pp. xix, xx.)

In the 63d Annual Report of the Insurance Commissioner, January 1, 1918, Part II, the Commissioner, Mr. Hardison, again comments on the Rating Bureau, as follows:

> The Massachusetts Rating and Inspection Bureau has now completed the third year of its existence, and is proving its worth in enabling the insurance companies to use a uniform system of schedule and experience rating. This results in rates calculated to meet the varying hazards of individual risks, thus giving employers rates adjusted to uniform standards, regardless of the company which may be carrying the risk. This Bureau has run more smoothly and been more efficient this year than ever before; rates have been promulgated with greater promptness; questions coming up for consideration and decision have been handled without wearisome delay. The general manager of the Bureau, Mr. W. N. Magoun, has been at its head since May, 1917, and has been concerned in the

solution of compensation problems since 1912, when he began a service which continued three years as the chief of the Workmen's Compensation Division of the Massachusetts Insurance Department, and afterwards for sixteen months as manager of a bureau in Pennsylvania with functions similar to those exercised by the Massachusetts Bureau.

The Bureau performs a necessary service in adjusting rates to conditions, — a service that the Commonwealth would hardly care to have left undone. The cost of this service, through the operation of the Bureau, is about $50,000 annually, which is apportioned among the companies in a manner prescribed by its by-laws. (P. ix.)

In the 64th Annual Report of the Insurance Commissioner, January 1, 1919, Part II, the Commissioner, Mr. Hardison, refers to Rating Bureaus in other states, as follows:

Other states also have rating bureaus whose members are insurance companies, and which operate under the supervision of the state to make certain that rates are applied fairly to all policyholders without unjust discrimination. They are New York, Pennsylvania, New Jersey, California, Wisconsin and perhaps others. (P. xxi.)

Practice of Massachusetts Rating and Inspection Bureau.

Under the practice as developed in connection with Workmen's Compensation Insurance, the insurance companies, writing this insurance, file with the Insurance Commissioner at the end of the year certain statistics showing their losses, classes of injuries, etc., and these are turned over to the Massachusetts Rating and Inspection Bureau for auditing, analysis and classification.

The statistical data are carefully analyzed and classified by the Bureau, checked with the data of the National Council on Workmen's Compensation Insurance as to what the national experience shows, and submitted to the Insurance Commissioner, together with data as to the amount to be paid to the insurance companies for expenses, and the premiums to be charged for each classified risk.

These premium charges do not take effect until approved by the Insurance Commissioner as adequate and reasonable for the risks to which they respectively apply.

This Massachusetts Rating and Inspection Bureau, operating under the supervision of the Insurance Commissioner, has for

nearly fifteen years been classifying and studying data in regard to Workmen's Compensation Insurance, and these valuable experience data which it has tabulated for all these years have made it possible to set rates with mathematical precision.

Enactment of Motor Vehicle Liability Insurance Law and Duties of Insurance Commissioner Thereunder.

The Insurance Commissioner, Mr. Monk, after the enactment of the Motor Vehicle Liability Insurance Law, in 1925,[1] and having in mind the successful operation of the Massachusetts Rating and Inspection Bureau in connection with Workmen's Compensation Insurance, decided in 1926 to create a Complementary Bureau to collect, classify and co-ordinate the statistical experience data under this Motor Vehicle Liability Insurance Law.

A summary of the law and the duties of the Insurance Commissioner thereunder are contained in the Annual Report of Mr. Monk, the Commissioner of Insurance for the year ending December 31, 1926, Part II, as follows:

> The Legislature of 1925 enacted two laws, the first being chapter 345, entitled "An Act to Require Certain Insurance Companies to File Certain Data with the Commissioner of Insurance," and the other being chapter 346, entitled "An Act Requiring Owners of Certain Motor Vehicles and Trailers to Furnish Security for their Civil Liability on Account of Personal Injuries Caused by their Motor Vehicles and Trailers."
>
> Chapter 346, with its complementary chapter 345, constitutes what is commonly known as the compulsory Motor Vehicle Liability Insurance Law.
>
> This law became effective as to motor vehicles registered on and after January 1, 1927, but in order that it might be properly put into operation it was necessary to do a great amount of preliminary work in the way of setting up the proper organization to perform the rate-making functions and the other many and various detailed duties imposed upon the Commissioner of Insurance and the department in the administration of the law.
>
> The primary purpose of the law is to furnish security for the satisfaction of damages to persons who may be injured or killed on the highways of Massachusetts through no contributing fault of their own, but by the negligent operation of motor vehicles on those highways. The law of civil liability is in no way changed, and is as

[1] Acts of 1925, cc. 345, 346.

heretofore, that the owners or person driving the vehicle must be solely responsible for the accident, with no contributing fault on the part of the injured person. The method of furnishing this security is by compelling motor vehicle owners, before they are permitted to register their motor vehicles, to file a certificate with the Registrar of Motor Vehicles of having obtained either an approved insurance policy or an approved surety company bond, or certificate of having deposited either cash or securities in the amount later set forth. The insurance contract or bond must provide indemnity to the amount of $5,000 for one person, of $10,000 for two or more persons injured or killed in a single accident, and the contract for indemnity must continue and be at least coterminous with the period of registration. The deposit of cash or securities must be made with the Commissioner of Public Works, and must be in the amount of $5,000.

This security by way of an insurance policy, bond, or deposit of cash or securities must be furnished for each motor vehicle or trailer registered, and the security covers not only the damages for death or personal injuries caused by the careless operation of a motor vehicle by its owner, his servants or agents, but also by other persons, if the motor vehicle is being operated with the express or implied consent of the owner. The law does not require security in respect to claims for property damage, but only claims for death and personal injuries. The law also applies solely to such claims arising out of the operation of automobiles upon the highways of the Commonwealth. It does not apply to such claims arising out of the operation of automobiles on private property or outside the Commonwealth. Those exempted from the requirements of the law are the state, cities, towns and counties, street railways under public control, companies operating under the control of the Public Utilities Commission, and those engaged in public carriage who under other provisions of laws are obliged to furnish security.

All forms of policy contracts, riders and endorsements must have the approval of the Commissioner of Insurance, and no company may lawfully issue a contract, rider or endorsement with reference to this so-called statutory coverage unless it is so approved.

The duty is imposed upon the Commissioner to establish or approve such classifications of risks as are reasonable and proper, and to assign to such classifications such premium charges as are adequate, reasonable, just, and non-discriminatory. All companies are required to write the coverage applied for, provided the risk is a proper one, upon the same terms and conditions and for the same premium charges with respect to any particular classification.

The forms of policies and bonds, riders and endorsements required for the proper operation of this law have had careful study before being approved, but the most difficult and important duty placed

upon the Commissioner is that of establishing the classifications of risks and premium charges applicable thereto.

At first it seemed that it would be necessary, in order to make the classifications and rates, to set up within the department a separate rate-making division, but upon further consideration it seemed advisable to create a separate organization for the purpose of acting as a point of contact between the insurance carriers writing this compulsory liability insurance and the department, the chief function of which organization would be to collect, classify and co-ordinate all of the statistical data and experience which would be found of any assistance whatsoever in the making of classifications of risks or the establishing of rates. This organization was brought about in this way. Already existing in the Commonwealth was a bureau, known as the Massachusetts Rating and Inspection Bureau, composed of all liability companies writing Workmen's Compensation Insurance.

It was found practicable and advisable to create a complementary bureau as a part of this Massachusetts Rating and Inspection Bureau. This new bureau was created with a separate constitution and was organized not only for the purpose of collection and analysis of statistical data, but also for the purpose of accident prevention, and is known as the Massachusetts Automobile Rating and Accident Prevention Bureau. This Bureau is under the control and supervision of the Commissioner of Insurance, and all of its acts, including the election and appointment of its officers, are subject to his approval. He is entitled to be, and is, represented at all meetings and has the deciding vote on all matters coming before the governing committee upon which there is a deadlock, as well as all matters coming before the Bureau in its meetings where the same condition exists. (Pp. 2, 3.)

Organization and Constitution of the Massachusetts Automobile Rating and Accident Prevention Bureau.

The Massachusetts Automobile Rating and Accident Prevention Bureau, above referred to and hereinafter called the Automobile Bureau, was organized and the constitution adopted November 19, 1926.

Particular attention is called to the following articles of the constitution:

Article II. Jurisdiction.

The jurisdiction of the Automobile Bureau shall be limited to the coverages defined in chapter 346 of the Laws of 1925 of the Commonwealth of Massachusetts, and all acts amendatory thereof and supplementary thereto.

ARTICLE III. OBJECTS.

The objects of the Automobile Bureau shall be:

(1) To co-operate with the Commissioner of Insurance of Massachusetts in carrying out the provisions of said chapter 346 and of chapter 345 of said laws, and all acts amendatory thereof and supplementary thereto.

(2) To deal with the following activities:

(*a*) The collection and analysis of such statistical data as may be necessary for the purposes of the Automobile Bureau.

(*b*) The formulation of provisions for Motor Vehicle Liability policies and bonds and other forms required by law.

(*c*) The classification according to hazard of motor vehicles and trailers which are subject to the provisions of chapters 345 and 346 of the Laws of 1925, and all acts amendatory thereof and supplementary thereto; the establishment of rules governing the writing of Public Liability Insurance and the execution of bonds upon such motor vehicles and trailers.

(*d*) The determination, upon the basis of the combined experience of all carriers, of pure premiums for the various classes of such motor vehicles and trailers.

(*e*) The determination, upon the basis of the combined experience of stock companies, of expense loadings which shall be used for the purpose of converting the pure premiums for the several classes of motor vehicles and trailers into gross rates; it being understood that the stock company members shall determine the said amounts of expense loadings, and that such expense loadings with all data pertaining thereto shall be furnished to the Governing Committee.

(*f*) The development of a merit rating plan by means of which rates may be equitably adjusted to the hazard of individual risks.[1]

(*g*) The furnishing of merit rates in accordance with the following plan:

Merit rates for individual risks shall be available to members upon inquiry made during a period sixty days prior to the expiration or anniversary date. Such rates shall also be available at any other time, provided the inquiring member shall present, in satisfactory form, an authorization from the assured; in the latter case, however, advices shall be sent to the carrying company, indicating that such request has been made without divulging the name of the inquiring member.[2]

(*h*) The explanation, to every owner of a motor vehicle or trailer who may apply, of the rate of his risk, including the method of its computation.

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[1] A plan of experience rating for fleets of five or more cars was developed by the Automobile Bureau for submission to the Insurance Commissioner in 1926, but was not submitted because of a ruling of the Attorney General of the Commonwealth to the Insurance Commissioner that a plan of experience rating which did not apply to every owner of a motor vehicle was discriminatory.

[2] Non-operative, as no plan of merit rating is in effect in Massachusetts.

(*i*) The encouragement of owners and operators of motor vehicles and trailers to reduce the number and severity of automobile accidents.

(*j*) The stamping, if correct, of such documents as the Governing Committee may require members to file with the Automobile Bureau on risks which are subject to merit rating.

ARTICLE IV. MEMBERSHIP.

Every insurance company authorized to transact liability insurance under chapter 175 of the General Laws of Massachusetts, and every surety company authorized to transact surety business under said chapter that intends to issue or does issue Motor Vehicle Liability policies and/or bonds under the provisions of chapter 346 of the Laws of 1925 and all acts amendatory thereof and supplementary thereto, may become a member of the Automobile Bureau.

ARTICLE VII. GOVERNING COMMITTEE. (Substance abbreviated.)

The membership of this committee is ten, composed of representatives of five stock and five non-stock insurance companies who have charge of the administration of the Bureau.

ARTICLE XI. COMMISSIONER OF INSURANCE.

The Automobile Bureau shall file with the Commissioner of Insurance of Massachusetts a copy of its constitution and all amendments thereto, together with such further information concerning the Bureau and its operations as may be required by the said Commissioner.

The Automobile Bureau shall be subject to visitation, supervision, and examination by the Commissioner of Insurance whenever he shall deem it expedient.

The Commissioner of Insurance shall be notified of all meetings of the Automobile Bureau and its committees, and shall be entitled, both personally and by such deputies or other representatives of his department as he may designate, to attend all such meetings and participate in its deliberations.

In case of a tie vote at any meeting of the Governing Committee or of the Automobile Bureau, the Commissioner of Insurance or his representative shall have the right to cast a deciding vote.

The Secretary of the Automobile Bureau and the members of all committees shall be subject to approval by the Commissioner of Insurance.

ARTICLE XII. MANAGER.

(4) The Manager shall file with the Commissioner of Insurance of Massachusetts, on behalf of the members of the Automobile Bureau, the manual of rules, classifications, and rates, the plan of merit

rating, and all amendments thereto. He shall similarly file any other information pertaining to the activities of the Bureau which may be required by the Commissioner of Insurance.

ARTICLE XIX. ACCEPTANCE OF MEMBERSHIP.

Each insurance carrier, in order to become a member of the Automobile Bureau, shall, through a duly authorized official, subscribe to a copy of this constitution and file the same with the Commissioner of Insurance of Massachusetts.

STATISTICAL PLAN OF AUTOMOBILE BUREAU.

On November 29, 1926, the Insurance Commissioner, Mr. Monk, promulgated a statistical plan to be used by the Insurance companies and the Automobile Bureau.

The Memorandum and Order relative to the establishment of this statistical plan was as follows:

Whereas, The Commissioner of Insurance is required and directed by chapter 345 of the Acts of 1925, after a full hearing and due investigation, to establish classifications of risks which shall be fair and reasonable, and a schedule of premium charges which shall be adequate, just, reasonable and non-discriminatory, to be used and charged by all insurance and surety companies for the Motor Vehicle Liability policies or bonds, as defined in section 34A of chapter 90 of the General Laws, required by chapter 346 of said acts to be issued or executed in connection with the registration of motor vehicles or trailers during or for the year 1927, and is empowered by section 113B of chapter 175 of the General Laws to make rules and regulations pertaining thereto;

And whereas, The Commissioner of Insurance, under section 113B of chapter 175 of the General Laws, may at any time require any company to file with him such data, statistics, schedules or information as he may deem necessary to enable him to fix or approve fair and reasonable classification of risks and premium charges which are adequate, just, reasonable and non-discriminatory;

And whereas, I deem it expedient to establish a statistical plan to facilitate the compilation of these data;

Now, therefore, Under the authority conferred by and pursuant to said section 113B of chapter 175 of the General Laws, I hereby order that the statistical plan, appended hereto, dated November 29, 1926, and known as "The Massachusetts Automobile Liability Statistical Plan," consisting of Part I, "Instructions," and Part II, "Codes," be and the same is hereby established and fixed for all companies now licensed or which may hereafter be licensed to issue Motor

Vehicle Liability policies or bonds in the Commonwealth of Massachusetts.

In witness whereof, I have hereunto set my hand and affixed the official seal of this Division at the city of Boston this twenty-ninth day of November, A.D. 1926.

WESLEY E. MONK,
Commissioner of Insurance.

FORMS USED BY AUTOMOBILE BUREAU.

The operation of this statistical plan is as follows:

Once each month the insurance companies writing this Motor Vehicle Liability Insurance forward certain statistics to the Automobile Bureau on two types of punched cards, one an "Exposure" card and the other a "Loss" card.

The *Exposure Card* [1] contains the following data in code:

Name of insurance company.
Month and year of the issue of the policy.
Term of policy.
Identification number of each policy written.
Coverage written.
City or town where automobile is principally garaged.
Policy limits.
Make or type of car.
Exposure, *i.e.*, car years. A car year is equivalent to one car insured for twelve months. One car insured for six months is equivalent to 5/10 of a car year. Two cars insured under the same policy for a period of nine months are equivalent to 1.5 car years.
Net premiums received on each car.

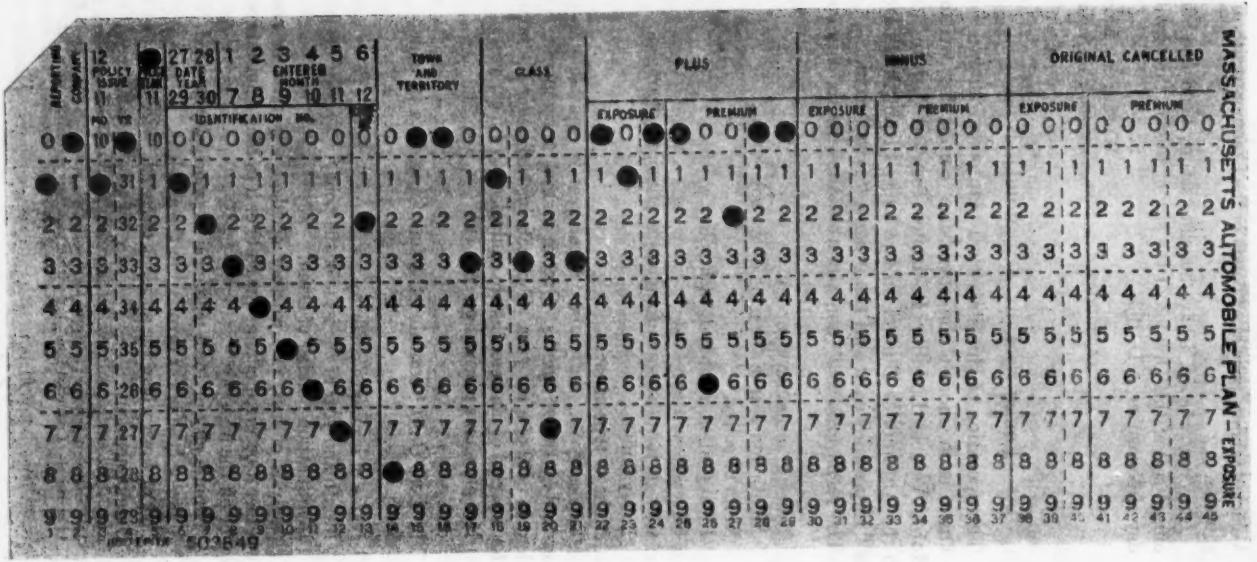
The *Loss Card* [2] contains the following data in code:

Name of insurance company.
Month and year of the issue of the policy.
Identification number of claim.
Analysis of loss, *i.e.*, whether accident was fatal or non-fatal, whether it occurred outside the state or if in Massachusetts, whether on or off the highway.
Premium city or town where car is principally garaged.
Make or type of car involved in the accident.
City or town where the accident occurred.
Date of accident.

[1] For sample of punched Exposure Card with explanatory statement, see p. 200.
[2] For sample of punched Loss Card with explanatory statement, see p. 202.

Exposure Card.

(See explanation on opposite page.)



Month in which accident was reported to the insurance company.
Kind of payment made.
Losses paid in dollars and cents for indemnity and medical services.

MASSACHUSETTS AUTOMOBILE LIABILITY STATISTICAL PLAN.

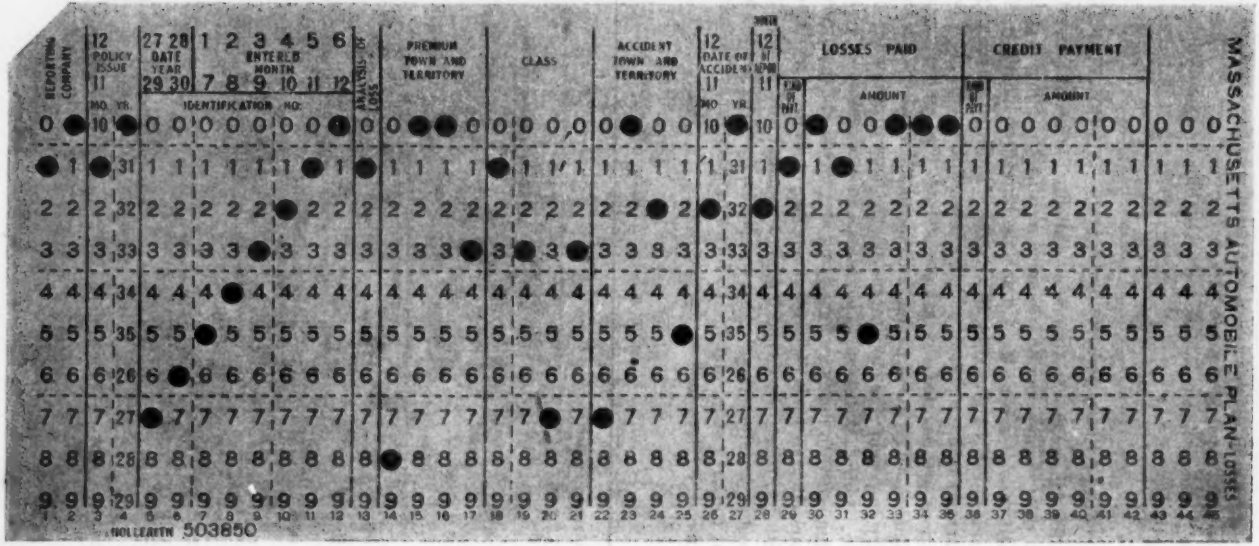
The Massachusetts Automobile Liability Statistical Plan established by the Commissioner of Insurance requires the filing of certain data with the Massachusetts Automobile Bureau on punch cards. Two forms of cards are used, — the Exposure Card, on which all premium transactions are reported, and the Loss Card, on which all loss transactions are reported. A sample of each card properly punched is attached. The use of punch cards for reporting these data was necessary to permit the application of mechanical means for compiling the required statistics. The Massachusetts Automobile Bureau is equipped with machines for sorting and tabulating these cards. The black circle shown in each column on the sample cards reproduced herewith is, in fact, a punched hole on the actual card as reported. For most of the information to be reported, it is necessary to erect a numerical coding system, and in the following paragraphs the information punched on the sample card is decoded.

Explanation of Exposure Card.

Columns.	Punched.	Decoded.
1–2	1 0	REPORTING COMPANY Lumbermens Mutual Casualty Company (10).
3–4	1 0	POLICY ISSUED January (1) 1930 (0).
5	12	POLICY TERM 12 months (12).
6–12	1 2 3 4 5 6 7	IDENTIFICATION NUMBER A number which will identify policy in the office of the company, if any correspondence relative to the information shown on the card is necessary.
13	2	COVERAGE This policy covers not only statutory but extra-territorial also.
14–17	8 0 0 3	TOWN AND TERRITORY Boston, Suffolk County (8) Boston (00) Territory 3 (3).
18–21	1 3 7 3	CLASS Policy is for 5/10 Limits (1) covering a Y symbol (3) Nash car (73).
22–24	0 1 0	EXPOSURE One full car year (010).
25–29	0 6 2 0 0	PREMIUM Premium on policy is $62.00 (06200). This premium is for a Y car in Boston $59.00 plus extra-territorial charge of $3.00.

Loss Card.

(See explanation on opposite page.)



Explanation of Loss Card.

Columns.	Punched.	Decoded.
1-2	1 0	REPORTING COMPANY Lumbermens Mutual Casualty Company (10).
3-4	1 0	POLICY ISSUED January (1) 1930 (0).
5-12	7 6 5 4 3 2 1	IDENTIFICATION NUMBER A number which will identify the claim in the office of the company, if any correspondence relative to the information shown on the card is necessary.
13	1	ANALYSIS OF LOSS Non-fatal accident on Massachusetts highway.
14-17	8 0 0 3	PREMIUM TOWN AND TERRITORY The premium received on the policy under which this claim was paid was charged to Boston (8003).
18-21	1 3 7 3	CLASS This claim was paid under a policy covering for 5/10 Limits (1) on a Y symbol (3) Nash car (73).
22-25	7 0 2 5	ACCIDENT TOWN AND TERRITORY This claim was the result of an accident which occurred in Brookline (7025) Norfolk County (7) Brookline (02) Territory 5 (5).
26-27	2 0	DATE OF ACCIDENT The accident resulting in this claim occurred in February (2) 1930 (0).
28	2	MONTH OF REPORT The accident was reported to the company in February (2).
29	1	KIND OF PAYMENT This was the first payment made to the claimant as a result of the accident. If additional payments are made to same claimant, such payments will be coded 0 in column 29, since this column is used to count the number of claims.
30-35	0 1 5 0 0 0	AMOUNT The amount of the loss payment is $150.00 (015000).

Tabulation of Statistical Data by Automobile Bureau.

These two cards, the Exposure Card and Loss Card, are punched by machine by the insurance companies from data in their files, and forwarded, as already stated, once a month to the Automobile Bureau.

By means of Hollerith tabulating machines the data on these cards are tabulated and classified by the Bureau for the calendar year for each city or town in which the cars causing accidents are principally garaged, and for which accident claims are made.

These tabulations and classifications are transferred to sheets for each city and town, as follows:

The passenger cars are divided into three classes, W, X and Y.

The basis for this classification is as follows:

I. List price, which affects jury verdicts.
II. Weight, which affects impact.
III. Wheel base, which affects controllability.
IV. Cylinder displacement, which affects speed.
V. Brake horsepower, which affects stopping ability.

Commercial cars are separately classified as a whole.

The statistical data for the W, X and Y private passenger cars and for the commercial cars are then listed in eight columns, as follows:

Col. I. Earned Car Years.

This is the car exposure or car years. A car insured for a full year would be reported to the Bureau as one car year exposure.

Col. II. Earned Premiums.

These are annual net premiums only for the coverage required by the Motor Vehicle Liability Insurance Law.

Col. III. Losses Incurred.

These include paid losses and outstanding losses to be paid after March 31 of the year subsequent to the year in which the statistics are gathered. The insurance companies are required to submit to the Bureau in April of each year their valuation of outstanding claims or losses as of March 31. These valuations are set up as a reserve,

and when the losses are actually paid the payment is substituted for the reserve set up. The amounts to be set up as reserves for outstanding losses are determined by insurance men of long experience in the settlement of claims, and a recent extensive check-up of these reserves set up by the various insurance companies authorized to do business in this state, by ten examiners employed by the state, showed an amount which was only about 1½ per cent less than the reserves set up by the insurance companies.

Col. IV. Number of Claims.

These are the numbers of Loss Cards reported to the Bureau on which losses have been paid or for which reserves have been set up.

Col. V. Claim Frequency.

Number of claims per 100 car years' exposure. Number of claims divided by earned car years or exposure.

Col. VI. Average Claim Cost.

Losses incurred divided by number of claims.

Col. VII. Pure Premium.

This is the actual loss cost per car year exposure.
Losses incurred divided by earned car years or exposure.

Col. VIII. Loss Ratio.

This is the percentage of premiums used to pay losses. Losses incurred divided by earned premiums.

Sample sheets of these tabulations and classifications are printed on pages 206, 207.

Public automobiles, such as taxicabs, busses, etc., cars operated by garages and dealers, and miscellaneous cars are classified separately, and statistical data are tabulated for earned premiums, losses incurred, and the loss ratio.

These statistical sheets are prepared by the Automobile Bureau from figures furnished by the insurance companies on their own actual experience. These figures are open to inspection at any time by the insurance commissioner, and can be checked with the insurance companies' books and financial statements.

These statistical data are pure experience statistics without any element of judgment involved except in the case of the proper reserves to be set up for outstanding claims or losses.

City of Boston Experience, Territory III.

Massachusetts Statutory Liability Experience, Policy Years 1927 and 1928.

		Earned Car Years.	Earned Premium.	Losses Incurred.	Number of Claims.	Claim Frequency.	Average Claim Cost.	Pure Premium.	Loss Ratio.
1927 and 1928	W	54,814.2	$1,589,611	$1,708,950	7,713	14.1	$222	$31.18	107.5
	X	48,886.6	1,808,804	1,665,529	7,840	16.0	212	34.07	92.1
	Y	15,034.5	676,552	573,517	2,363	15.7	243	38.15	84.8
	Total	118,735.3	$4,074,967	$3,947,996	17,916	15.1	$220	$33.25	96.9
	Commercial	19,744.1	$1,569,554	$1,003,543	4,926	24.9	$204	$50.83	63.9
1928	W	26,114.6	$757,323	$787,713	3,728	14.3	$211	$30.16	104.0
	X	23,896.9	884,185	876,922	4,142	17.3	212	36.70	99.2
	Y	7,654.5	344,452	286,020	1,071	14.0	267	37.37	83.0
	Total	57,666.0	$1,985,960	$1,950,655	8,941	15.5	$218	$33.83	98.2
	Commercial	9,641.5	$759,173	$459,582	2,487	25.8	$185	$47.67	60.5
1927	W	28,699.6	$832,288	$921,237	3,985	13.9	$231	$32.10	110.7
	X	24,989.7	924,619	788,607	3,698	14.8	213	31.56	85.3
	Y	7,380.0	332,100	287,497	1,292	17.5	223	38.96	86.6
	Total	61,069.3	$2,089,007	$1,997,341	8,975	14.7	$223	$32.71	95.6
	Commercial	10,102.6	$810,381	$543,961	2,439	24.1	$223	$53.84	67.1

		Public.	Garages, Dealers.	Miscellaneous.	Total, All Classes.
1927 and 1928	Premiums	$1,208,768	$184,292	$63,508	$7,101,089
	Losses	616,598	149,515	52,744	5,770,396
	Loss ratio	51.0	81.1	83.1	81.3
1928	Premiums	$687,034	$89,132	$30,817	$3,552,116
	Losses	351,866	73,201	32,253	2,867,557
	Loss ratio	51.2	82.1	104.7	80.7
1927	Premiums	$521,734	$95,160	$32,691	$3,548,973
	Losses	264,732	76,314	20,401	2,903,839
	Loss ratio	50.7	80.2	62.7	81.8

Experience Data.

Statistical experience figures and data are the only sound basis upon which to calculate the premium charges with mathematical precision, and as tabulated and compiled by the Automobile Bureau show the cost factors entering into the composition of ratios.

Contacts between Insurance Department and Automobile Bureau.

A deputy of the Insurance Department, employed and paid by the department, is in constant attendance at the Automobile Bureau. He is an actuary and devotes his entire time in supervising the collection, tabulation, compilation and analysis of all the data, facts and figures reported to the Automobile Bureau by the insurance companies.

Analysis of Experience Data.

After the statistical experience data are tabulated by the Automobile Bureau for each city and town in which the cars causing accidents are principally garaged, and for which accident claims are made, the data must be analyzed on scientific and sound insurance principles before the rates are fixed and established. The Automobile Bureau analyzes these statistical data to determine their credibility, and files with the Insurance Commissioner its recommendations as to the classifications of risks of the different types of motor vehicles, and the classifications of risks of like hazard.

Duties of Insurance Commissioner under the Law.

The Motor Vehicle Liability Insurance Law provides that after public hearing the Insurance Commissioner —

> . . . shall, annually on or before September fifteenth, after due hearing and investigation, fix and establish fair and reasonable classifications of risks. . . .[1]

Although the membership of the Automobile Bureau is composed entirely of representatives of the insurance companies writ-

[1] G. L., c. 175, § 113B, as amended by, Acts of 1925, c. 345, § 2; Acts of 1925, c. 346, § 4; Acts of 1927, c. 182; Acts of 1928, c. 381, § 6; and Acts of 1929, c. 166.

ing this Motor Vehicle Liability Insurance, it is in no sense a rate-making body. The Insurance Commissioner is charged with the duty by statute to: —

> ". . . fix and establish . . . adequate, just, reasonable and non-discriminatory premium charges [*i.e.*, rates]; [1]

and whereas the recommendations of the Automobile Bureau are those of its insurance company members, they are in no way binding on the Insurance Commissioner, who is absolutely free to adopt them or not, as he deems best.

Automobile Bureau not a Rate-Making Bureau.

In this connection the commission again calls attention to the remarks already quoted (page 189) of the Insurance Commissioner, Mr. Hardison, in his 61st Annual Report, January 1, 1916, Part II, where he refers to the Massachusetts Rating and Inspection Bureau operating under the Workmen's Compensation Insurance Law, as follows:

> In fine, it [the Bureau] is to be a service and not a rate-making organization. . . . The work of ascertaining the proper loss cost for each classification from the experience of the companies as far as experience is sufficient is in no proper sense rate making; it but ascertains and makes available the material for rate making. (P. xx.)

Territorial Classifications.

The Insurance Commissioner ". . . shall, . . . fix and establish fair and reasonable classifications of risks. . . ."

The tabulated sheets prepared by the Automobile Bureau from the experience data supplied by the insurance companies classify the risks into: (*a*) three groups of passenger cars; (*b*) commercial cars; (*c*) public automobiles; (*d*) garages — dealers; and (*e*) miscellaneous other classes.

These classified groups of motor vehicles are further classified by the Automobile Bureau into territorial groups or zones. *This zoning system or territorial classification is in effect in every state in the country, and was in effect in Massachusetts prior to the adoption of the present Motor Vehicle Liability Insurance Law.*

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[1] G. L., c. 175, § 113B, as amended by, Acts of 1925, c. 345, § 2; Acts of 1925, c. 346, § 4; Acts of 1927, c. 182; Acts of 1928, c. 381, § 6; and Acts of 1929, c. 166.

History of Territorial Classification.

In the early days of automobile liability insurance, the rates were largely based on judgment, as there were no experience data available. There were only a few schedules of rates, and most of the states had no territorial classifications.

As the number of automobiles increased and experience data were collected and analyzed, the need for territorial classifications became apparent, and statistical data were tabulated for each city of over 200,000 population, and separate data for each state or the remainder of a state in case it had one or more cities of over 200,000 population. Data on this basis which became available, showed considerable variation in loss experience, and the number of rate schedules were increased.

Later, with more experience data available, the territorial classifications were refined still further for each state, as follows:

Territory I. Each city of over 100,000 population, together with the surrounding territory within a radius of five or ten miles. (In case of some of the large cities the suburban territory was classified separately.)

Territory II. All cities with 25,000 to 100,000 population, together with the surrounding territory within a radius of five or ten miles.

Territory III. Remainder of the state, excluding Territories I and II

These territorial classifications had developed gradually, based on years of study and experience data. The object has been to refine the territories as far as possible, but still to obtain for each territory a sufficient volume of experience which will give reliable data upon which to base rates.

Risks of Like Hazards Classified.

These territorial classifications of risks were adopted when sufficient experience data became available in order to classify risks of like hazards. The losses have always been tabulated with reference to the city or territory in which the cars causing the accidents are principally garaged. The owner of a car principally garaged in a certain city or territory has a like hazard with other car owners in the same city or territory, and is exposed to that hazard every time he drives his car,

whereas a car owner from a different city or territory may be exposed to the same hazard only a few times, *i.e.*, whenever he enters that particular hazard zone.

Territory Zones in Massachusetts.

In Massachusetts, in 1924, there were seven territorial classifications which remained practically the same through 1926.

Territory Zones for 1927, 1928.

When the rates were established by Commissioner Monk, in September, 1926, to go into effect January 1, 1927, in accordance with the provisions of the Motor Vehicle Liability Insurance Law, the Commonwealth was divided by him into three territorial divisions for rate-making purposes, as follows:

Territory I. Comprising Boston and seventeen other cities or towns surrounding Boston.

Territory II. Comprising suburban Boston, together with Fall River, New Bedford, Worcester and Springfield, with their suburbs.

Territory III. Remainder of the state.

This territorial division of the state remained in effect for the years 1927 and 1928.

Massachusetts Experience Data of 1927.

During 1927 the Automobile Bureau was collecting the statistical data from the insurance companies showing their first year's actual Massachusetts experience under the Motor Vehicle Liability Insurance Law.

These data were tabulated and analyzed by the Automobile Bureau in 1928, and on August 15, 1928, were submitted to the Commissioner, together with a brief expressing the views of the insurance companies in respect to rates and classifications of risks to become effective January 1, 1929.

For the first time the Commissioner had before him a full year's Massachusetts experience data on the basis of which he was required, under the Motor Vehicle Liability Insurance Law, to "fix and establish fair and reasonable classifications of risks."

One of the most important questions for him to consider was whether the territorial division of the state into three territories was a "fair and reasonable classification of risks" based on the statistical data for 1927 as filed with him by the Automobile Bureau.

BRIEF OF AUTOMOBILE BUREAU FOR TERRITORIAL CLASSIFICATIONS FOR 1929.

The 1927 data for Territory I, consisting of Boston and seventeen surrounding cities and towns, showed for private passenger cars a wide variation in pure premiums, *i.e.*, loss cost per car. The range was all the way from $58.93 loss cost per car for Chelsea, to $16.31 loss cost per car for Newton.

The Automobile Bureau, in its brief submitted August 15, 1928, to the Commissioner, recommended:

1. That Territory I be divided into two groups, referred to for identification purposes only as Territory I A and Territory I B, as follows (Brief, pp. 6–10):

Private Passenger Cars.

TERRITORY I A.	Pure Premium.	TERRITORY I B.	Pure Premium.
Chelsea	$58 93	Malden	$25 67
Revere	45 00	Brookline	24 05
Boston	32 02	Milton	23 87
Somerville	30 55	Quincy	22 95
Cambridge	30 43	Arlington	21 54
Everett	28 85	Winchester	21 52
Winthrop	27 35	Medford	21 33
		Watertown	20 56
		Dedham	17 27
		Belmont	17 00
		Newton	16 31

The average pure premium for Territory I A is $32.67, and the average pure premium for Territory I B is $21.25, and it is the Bureau's recommendation that the present Territory I be divided into two territories, as shown above.

This division of the present Territory I into two parts, referred to as Territory I A and Territory I B, seems justified by the experience in the first instance. Rates based on an indicated pure premium of $28.36, the average for all eighteen towns in the present Territory I,

would certainly be open to attack from any number of towns. First of all, the largest exposure among these eighteen towns is in Boston, where there are over 61,000 car years, each of which on the average cost $32.02 for losses. Each of the towns in Territory I B would be paying a good part of Boston's losses if the territory as at present was not divided. The indicated pure premium for each town in Territory I B is lower than the pure premium for any town in Territory I A.

This division of the present Territory I into two parts, referred to as Territory I A and Territory I B, can be justified not only by experience but also by the knowledge of conditions in these various localities. It will be seen that the seven towns included in Territory I A are all on what is known as the North Shore route. Practically all of the traffic leaving Boston for the North Shore passes through these seven towns and along one heavily congested boulevard. This is not true of traffic leaving Boston in any other direction. Traffic leaving Boston for Malden, Watertown, Belmont, Newton and other towns west or northwest of Boston divides into different groups, using different arteries of traffic within a quarter of an hour's drive of the center of the city. On the North Shore route, however, it takes nearly an hour for traffic over the one main artery to segregate into its component parts and diverge off this one congested street. With congestion comes accidents, and since the residents of these towns are constantly exposed to this congestion, it is to be expected that the seven towns on the North Shore route would show a higher loss cost than others.

Not only does the traffic congestion differ in these towns, but also the environment varies. Within fifteen minutes of leaving the center of Boston toward any of the towns in Territory I B an automobile operator is in a residential section rather than a business district. On the other hand, the North Shore route remains practically a business district for over an hour's ride from Boston.

If, as proposed, the present Territory I is divided into two territories, and a pure premium of $32.67 adopted for Territory I A and a pure premium of $21.25 adopted for Territory I B, there will still be some variation in each proposed territory from these averages. In Territory I A, Chelsea and Revere will be way above the average, which is offset by some larger towns being slightly below the average. Chelsea and Revere have only 2,800 car years' exposure each, and the question is to determine whether this small exposure is dependable or indicative. Admittedly, it is indicative to a certain degree, but it must be remembered that there is available but one year's experience under the law. If the exposure in Chelsea and Revere is recognized individually, and their rates increased above the average for the proposed Territory I A, which includes their experience, every other town with an exposure of 2,800 car years, regardless of whether the variation from the average is upward or downward,

must also be recognized. The amount of such variation from the average in the case of other towns of 2,800 car years' exposure cannot be held out as a reason for not recognizing the exposure, for once 2,800 car years is given credence as indicating a needed increase or decrease, it establishes 2,800 car years as a criterion of exposure and lays down a principle which must be adhered to. Rates for individual towns cannot be selected in a "hit or miss" manner, and some underlying principle must be laid down and strictly adhered to if rates which can be justified to the people of Massachusetts are to result. Insurance rates are average rates, and some people must pay for the losses of others, and likewise some towns must pay for the losses of other towns, until the available exposure is large enough to warrant using the experience of individual towns.

In Territory I B the chief variation from the average pure premium is in the city of Newton, which shows a pure premium of $16.31 on an exposure of 10,000 car years, as compared with the average pure premium for the territory of $21.25. This is not as great a variation from the average as is indicated for Chelsea and Revere, but it is on a much greater exposure. Of course, 10,000 car years is a fair-sized exposure, and should be indicative in a degree. Here, again, the question arises of the time exposure. Is one year indicative, or may it be chance?

Certainly 5,000 car years' exposure in each of two years showing identical pure premiums for each year would be more indicative than 10,000 car years for any one year. Here, again, also, if the 10,000 car years are to be recognized for Newton the same exposure must be recognized for other cities of like exposure, such as Cambridge, Somerville, Quincy, New Bedford, etc. The variation from the average is not so marked in these other towns, but it is present, and the citizens of these towns have just as much right to have their rates based on their experience as have the citizens of Newton. The degree of modification has no bearing, as the principle must remain constant for all towns.

The only other variations which amount to anything are in the pure premiums for Malden, which is as far above the average as Belmont and Dedham are below. But if Malden, with over 5,000 car years' exposure, is selected for special treatment, so must Brookline be, and so, also, dozens of other towns. Belmont has an exposure comparable to that of Chelsea and Revere, and if Belmont is given special treatment, so must Chelsea and Revere be given like treatment. Dedham has less than 2,000 car years' exposure, and the addition of a single $5,000 claim would increase the pure premium over $2.50, which certainly proves that such a small exposure is not a stable base as an indication for a rate.

The merits and demerits of Compulsory Automobile Liability Insurance as an accident reducing measure have been stressed by many people. Although the law is primarily a security law, it is to

be hoped that it will result in a reduction of accidents. One of the ways in which this may be accomplished is by making the operators who have accidents pay the cost. Obviously, this cannot be done as regards the individual operator, but it can be done for each town as experience develops. Some day each city or town in Massachusetts may have rates based in whole or in part on the past experience of that particular city or town. At the present time there is only one year's experience available, and no city or town has enough exposure to be absolutely dependable as a basis for its own rate when considered with the time exposure.

It is for these reasons that it is proposed to select only groups of cities and towns for increases or decreases. No single town has been changed from one territory to another regardless of whether its experience varied upward or downward from the average. To select one individual town for special treatment forces the selection of others. The proposed split of Territory I into two parts recognizes the principle of charging particular towns for their bad experience, and giving credit to towns with good experience, but does not select any individual town for special treatment. On one year's experience this procedure is justified. When another year's data are available, doubling the exposure and making a comparison of the two years possible, it may warrant going still farther with the same principle, and in all probability, base the rates for some towns on their own experience in whole, and to go part way in the direction of the town indication in many other cases.

2. That certain changes be made in Territory II, as follows (Brief, pp. 11–13):

The present Territory II consists of a number of cities and towns in various parts of the Commonwealth. There are four distinct localities now combined in this territory, as follows:

1. Boston Suburban (fifty-one towns surrounding the present Territory I).
2. Fall River and New Bedford with adjacent towns.
3. Springfield with adjacent towns.
4. Worcester with adjacent towns.

The combined experience for Territory II for private passenger cars gives a pure premium of $17.14. However, when separated into the four divisions, as shown above, there is a considerable variation in pure premiums. These indications are as follows:

1. Boston Suburban	$18 38
2. Fall River and New Bedford	15 21
3. Springfield	15 50
4. Worcester	15 87

It is apparent from these figures that the average pure premium of $17.14 is not proper for all these towns. The pure premiums for Fall River and New Bedford, Springfield and Worcester, are so close together that these localities may continue to be grouped together, but obviously should not be grouped with Boston Suburban. The combination of the three groups of towns of Fall River and New Bedford, Springfield and Worcester gives a pure premium of $15.53.

It is the recommendation of the Bureau, therefore, that the present Territory II be split into two territories, referred to for identification purposes as Territory II A and Territory II B. The towns referred to in the Manual as Boston Suburban will constitute Territory II A, and the remainder of the present Territory II will constitute Territory II B.

The average pure premium for the proposed Territory II A is $18.38. The city of Lynn has the largest exposure (11,000 car years) in this territory. The indicated pure premium for Lynn is $25.35, which is considerably above the average of $18.38. An exposure of this size is fairly indicative, but cannot be recognized if we are to remain consistent with the principle laid down of selecting no individual town for special treatment. If Lynn is penalized on this exposure, Newton, with almost the same exposure, must be given the benefit of its favorable experience. This is the only outstanding variation from the average in Territory II A, except where the exposure is small.

A question has been raised, however, as to why the towns with the small exposures should not be placed in the remainder of state territory with the rest of the rural communities. The answer to this question is twofold. In the first place, the indicated pure premium of a small exposure is pure chance. For example, the town of Tyngsborough, with an exposure of 156 car years, has a pure premium of only $8.05, while the town of Boylston, with an exposure of 153 car years, has a pure premium of $47.29.

Neither pure premium is indicative of anything, for the presence or absence of an accident is pure chance. Therefore the indications cannot be trusted and used as a basis for transferring certain towns to a different territory. Secondly, we have available only one year's experience, and must proceed carefully. The present territories were established more or less on the basis of judgment. We believed our judgment to be the best that could be found, and, in the absence today of any figures, would stand on that judgment. Although there are figures available, before revising our judgment we should have a secure base for any changes. The experience of the small towns in Territory II A varies because of the small exposure, and is therefore not a safe indication that our judgment of including these towns in Territory II A was wrong. For these reasons we believe the towns in the Boston suburban district should all remain as before.

3. That no change be made in Territory III (Brief, pp. 14–15):

The average private passenger car pure premium for Territory III is $11.35. This territory is referred to as "Remainder of State," and contains all towns not in Territories I and II. The exposure varies from Pittsfield, with 5,700 car years, to Gosnold, with 1.5 car years. There is no natural division of this territory into groups of towns which will give an indication far above or below the average for the entire territory. Adhering to our principle of only selecting groups of towns for changes the Bureau recommends that the present Territory III be continued without change.

4. That with reference to commercial cars a flat reduction of 2.7 per cent be granted. (Brief, pp. 16–19.)

Since the commercial car experience, when divided up by territories, classes or load capacities, shows no individual territory, class or load capacity far out of line with the average of all combined, and since the average loss ratio for all commercial cars is 58.2 per cent as compared with a permissible loss ratio of 59.8 per cent, it is recommended by the Bureau that all commercial car pure premiums be reduced by the ratio of 58.2 per cent to 59.8 per cent or 2.7 per cent as a basis for 1929 rates. (Brief, p. 18.)

5. That with reference to public automobiles a flat reduction of 16.7 per cent be granted, and that the mileage basis for the writing of taxicabs be eliminated. (Brief, pp. 19–22.)

6. That with reference to motorcycles they be assigned the rate applicable to W — private passenger cars. (Brief, p. 22.)

7. That with reference to miscellaneous classes the pure premiums underlying the present rates be continued. (Brief, pp. 22, 23.)

TERRITORIAL CLASSIFICATIONS FIXED FOR 1929.

The Acting Insurance Commissioner, Mr. Linnell, on November 17, 1928, found that these classifications of risks as recommended by the Automobile Bureau in its brief of August 15, 1928, were "fair and reasonable," and ordered that they be "fixed and established"[1] for or during the year 1929.

[1] See p. 65 for the fixing of the 1929 rates.

Under this order the State was divided into 5 Territorial divisions for rate-making purposes for the year 1929 as follows:

TERRITORY I. Boston, Cambridge, Chelsea, Everett, Revere, Somerville and Winthrop, part of old Territory I.

TERRITORY II. Eleven cities and towns closely surrounding Boston, balance of old Territory I.

TERRITORY III. Fifty-one cities and towns comprising suburban Boston, part of old Territory II.

TERRITORY IV. Fall River, New Bedford, Springfield and Worcester with their suburbs, balance of old Territory II.

TERRITORY V. Remainder of the State, old Territory III.

During 1928 the Automobile Bureau was collecting the statistical data from the insurance companies showing their second year's actual Massachusetts experience under the Motor Vehicle Liability Insurance Law.

BRIEF OF AUTOMOBILE BUREAU FOR TERRITORIAL CLASSIFICATIONS FOR 1930.

The 1927 and the 1928 statistical data were tabulated by the Automobile Bureau separately and combined, and on August 15, 1929, were submitted to the Insurance Commissioner, Mr. Brown, together with a Brief expressing the views of the insurance companies in respect to rates and classifications of risks to become effective January 1, 1930.

PRIVATE PASSENGER CARS.

With reference to Territory I, the Brief, page 9, cited the combined 1927 and 1928 pure premiums or loss cost per car, as follows:

	Pure Premium.
Boston	$33 25
Cambridge	29 04
Chelsea	54 93
Everett	30 13
Revere	46 00
Somerville	28 02
Winthrop	26 32

The brief analyzed and discussed these pure premiums or loss cost as follows, pages 9 to 13:

It will be noted that the average pure premium of $33.03 for the entire territory is very close to the pure premium for Boston alone, and, if the territory was continued as at present, no particular injustice would be done to the people of Boston. This same condition, however, is not true in any of the other cities or towns in this territory.

To continue the territory as at present, using for each town the average pure premium of $33.03 as the basis of the rates, would mean that the respective cities and towns would be overcharged or undercharged as indicated below, according to its individual variation from the average pure premium.

	Overcharged.	Undercharged.
Boston	–	$0 22
Cambridge	$3 99	–
Chelsea	–	21 90
Everett	2 90	–
Revere	–	12 97
Somerville	5 01	–
Winthrop	6 71	–

Thus Cambridge, Everett, Somerville and Winthrop cars would, on the average, each pay too much, ranging from $2.90 to $6.71 per car above the actual loss cost, while Chelsea and Revere would fail to pay their own cost by $21.90 and $12.97 per car, respectively.

This is a condition which cannot be justified, and therefore cannot be continued. In order to make correct rates, Territory I must be divided.

The question of what constitutes a dependable volume of automobile experience has been argued for many years. It was originally felt that the dependability of experience rested entirely on having a sufficient number of cars insured. For example, for some time an exposure of 50,000 car years was considered a sufficient volume of experience to be entitled to full credibility. Recent studies have indicated, however, that another quantity beside the actual exposure enters into the determination as to what constitutes a dependable volume of experience. This other quantity is the claim frequency.

To determine the volume of experience sufficient to produce an average pure premium which is entitled to full credibility, it is

necessary to have not only enough cars insured, but also enough claims to produce a dependable average. More credibility could be given to an exposure of 50,000 car years if the claim frequency or number of claims per hundred cars was 5 than if for the same exposure the number of claims per hundred cars was only 2. Using the theory of probabilities it is possible to construct a credibility table which will show the number of cars required at varying claim frequencies which will assure that the resulting actual pure premiums will be, in 99 cases out of 100, within 5 per cent of the true average pure premium. A copy of such a credibility table is on file with the department. The table indicates that at a claim frequency of 5 claims per hundred cars it would require 50,000 car years' exposure to produce full credibility, with less exposure necessary as the claim frequency increases, and more exposure necessary as the claim frequency decreases.

It is obvious that in the present Territory I the city of Boston should have rates based upon its own experience. Under the credibility table referred to above, it would receive 100 per cent, or full credibility, and there is no reason why the Boston motor vehicle owners should pay more or less on the average than the actual loss cost indicated. The distribution of this average loss cost by type of passenger car as shown by experience is —

	W.	X.	Y.	Total.
Exposure	54,814.2	48,886.6	15,034.5	118,735.3
Losses	$1,708,950.00	$1,665,529.00	$573,517.00	$3,947,996.00
Pure premium	$31.18	$34.07	$38.15	$33.25

In each type of passenger car there is a large volume of experience, and the Bureau feels that these pure premiums should be accepted as the basis of the 1930 rates for Boston.

The cities of Cambridge, Everett, Somerville and the town of Winthrop show pure premiums materially below the average of $33.03 for the territory. The range between Winthrop ($26.32) and Everett ($30.13) is less than $4, and the Bureau proposes to combine these four places into one territory. The combined experience is as follows:

	W.	X.	Y.	Total.
Exposure	25,527.7	19,761.5	5,416.2	50,705.4
Losses	$700,139.00	$556,407.00	$195,645.00	$1,452,191.00
Pure premiums	$27.43	$28.16	$36.12	$28.64

The total pure premium of the combined experience of $28.64 is very close to each of the individual town pure premiums, and there is a large volume of experience in each type of passenger car. The Bureau recommends that the indicated pure premiums be accepted as the basis of the 1930 rates for this new territory.

The cities of Chelsea and Revere present a much more difficult problem. The claim frequency and the pure premium for each of these cities are very far above the average for the territory. The high claim frequencies and the high pure premiums are not due to either year alone, for in both 1927 and 1928 the same conditions are indicated. It is evident that in 1927 and in 1928 the other cities in Territory I have been paying a considerable amount of the losses which should properly be charged to Chelsea and Revere. With two years of experience available, each year indicating that Chelsea and Revere have produced a loss cost considerably above the average, it seems unfair to continue to penalize other towns by combining them with Chelsea and Revere.

A combination of the experience for Chelsea and Revere produces an indicated pure premium of $50.54. The pure premium for Chelsea alone is $54.93, and Revere alone is $46.00. To use the average would penalize the Revere motor vehicle owners still farther than their own actual loss cost, for the average is $4.54 above the loss cost of Revere cars. Similarly, the average would benefit the Chelsea owners to the extent of $4.39 on the average. The only solution which seems fair and just is to charge each of these cities with its own losses, and to base the rates for Chelsea on an average pure premium of $54.93, and for Revere on an average pure premium of $46.00. While the experience for all private passenger cars is limited in each of these cities, it has been so consistently bad that it seems only fair to use these indications.

The Automobile Bureau recommended in their Brief (page 15) that Territory I of 1929 be subdivided into four territories for 1930, as follows:

Territory I. Chelsea.
Territory II. Revere.
Territory III. Boston.
Territory IV. Cambridge, Everett, Somerville and Winthrop.

Order of Insurance Commissioner, Mr. Brown, September 16, 1929.

The Insurance Commissioner, Mr. Brown, on September 16, 1929, found that these new territory classifications of risks as recommended by the Automobile Bureau in its Brief of

August 15, 1929, were "fair and reasonable," and ordered that they be "fixed and established" for or during the year 1930.

TERRITORY II OF 1929.

With reference to Territory II of 1929, consisting of eleven cities and towns closely surrounding Boston, the average pure premium or loss cost shown by the combined experience data of 1927 and 1928 was $20.68, with a range of $23.85 for Malden to $17.22 for Dedham. In the opinion of the Automobile Bureau these eleven cities and towns were properly grouped (Brief, page 16), but they recommended that twelve other cities and towns from Territory III of 1929 adjoining the eleven cities and towns in Territory II of 1929 be joined with the latter to make a new territory of twenty-three towns and become Territory VI for the year 1930:

There is a group of towns adjoining some of the cities and towns known in 1929 as Territory II which show pure premiums, as follows:

Woburn	$19 86
Wakefield	24 89
Lynnfield	29 02
Peabody	26 10
Salem	21 85
Waltham	20 04
Saugus	23 61
Melrose	20 08
Stoneham	11 09
Nahant	12 87
Swampscott	14 73
Marblehead	17 40

The average indicated pure premium for the 1929 Territory II is $20.68, and it seems proper to include the above twelve towns with the eleven towns which were, in 1929, Territory II, as a new territory. The combination of the two years' experience for these twenty-three towns shows pure premiums of —

W	$19 37
X	20 67
Y	24 79
Average	$20 64

It is to be noted that the inclusion of the twelve towns from the 1929 Territory III with the eleven towns in the 1929 Territory II changes the average pure premium for the 1929 Territory II only

.04 cent. The towns will make a compact territory which seems justified not only by the experience but also because of the geographical location of the town. (Brief, p. 20.)

The Automobile Bureau also recommended that Lynn, included in Territory III of 1929, be removed from this territory and placed by itself in a new Territory V for the year 1930 (Brief, pp. 17, 18):

For both 1927 and 1928 the city of Lynn has shown a pure premium higher than the average for the territory. In 1927 the pure premium for Lynn was $24.79, and for 1928 it was $26.12, with an average pure premium for the two years on an exposure of over 21,000 cars of $25.43 as compared with the average for the group of only $18.63. The other cities and towns in this territory have been paying a part of the losses caused by Lynn cars, and it seems proper to correct this situation at this time.

The claim frequency for Lynn is 11.8 per hundred cars, and on the basis of the credibility tables referred to in this Brief the exposure in Lynn is sufficient for 100 per cent credibility. It is recommended by the Bureau, therefore, that the city of Lynn be placed in a separate territory, and that the average passenger car pure premium be adopted as the basis for 1930 rates.

A year ago, when the 1928 Territory I was divided into two territories, the cities and towns on the so-called North Shore route were assigned a higher rate than other Metropolitan District communities, not only because of the experience indications, but also because of the known congested traffic condition on this route. At that time consideration was given to the city of Lynn, but because of having available only a single year's experience no change was proposed. The great bulk of the traffic going from Boston to the North Shore towns of Beverly, Salem, Manchester and Gloucester goes through the city of Lynn. Of course, losses caused by cars from other cities are not charged to Lynn, but the congestion caused by this through traffic creates a hazard to which the Lynn cars are exposed. The result is a loss cost produced by Lynn cars higher than the average for the other cities and towns now combined with Lynn for rating purposes.

ORDER OF INSURANCE COMMISSIONER, MR. BROWN, AS TO TERRITORY II OF 1929.

The Insurance Commissioner, Mr. Brown, in his order of September 16, 1929, combined Territories V and VI as recommended above by the Automobile Bureau into a new Territory V, as follows:

He did not allow a separate territorial classification for Lynn, and he left Nahant, Swampscott and Marblehead in Territory III of 1929. This left nine out of twelve cities and towns of Territory III of 1929 adjoining the eleven cities and towns in Territory II of 1929, and these twenty cities and towns, together with Lynn, were classified as a group of twenty-one cities and towns into Territory V, and this classification was "fixed and established" by the said order for or during the year 1930.

Territory III of 1929.

With reference to Territory III of 1929, consisting of fifty-one cities and towns comprising suburban Boston, nine cities and towns, as well as Lynn, were transferred from this territory to the new Territory V, as stated above. This left forty-one cities and towns of Territory III of 1929. The Automobile Bureau in their Brief recommended that the city of Lowell and seven surrounding towns be created a separate Territory VII for the year 1930:

> The city of Lowell, which has the second largest exposure in the Territory III with 16,554.2 car years, has a loss cost of $19.25. A group of towns closely contiguous to Lowell shows pure premiums of —
>
> | | |
> |---|---|
> | Dracut | $24 74 |
> | Tyngsborough | 15 39 |
> | Tewksbury | 25 20 |
> | Chelmsford | 17 75 |
> | Billerica | 19 65 |
> | Burlington | 10 79 |
> | Wilmington | 29 35 |
>
> A combination of the Lowell experience and the experience of these surrounding towns produces an average private passenger car pure premium of $19.82. There is less than 2,000 car years' exposure in any of these towns included with Lowell, and it is proposed to erect a separate territory for Lowell and these surrounding towns, and to base the rates on the average indicated pure premium.
>
> Under the credibility tables referred to in this brief this combination of experience would receive 88 per cent credibility, but there are several reasons why this group of towns should be separated from the remainder of the present Territory III.
>
> The pure premium for each year by towns is as follows:

	1928.	1927.
Lowell	$20 25	$18 30
Dracut	31 31	17 74
Tyngsborough	23 04	8 34
Chelmsford	12 59	22 91
Billerica	23 96	15 67
Burlington	10 73	10 84
Wilmington	30 94	27 58

With the exception of Burlington, where the indications of the two years are very nearly identical, each of these towns shows loss costs higher in 1928 than in 1927, except Chelmsford.

Most of these towns are on main arteries of travel leading to New Hampshire, and are subject to the traffic congestion of these "through routes."

If this Lowell group of towns is not separated from the balance of Territory III the other towns will not be getting the reduction in rates to which they are entitled on the basis of their experience. With the Lowell group eliminated there still remains enough volume of experience in the balance of Territory III to receive 100 per cent credibility, and this experience indicates that a reduction in rates is warranted. The principle underlying rate-making of charging costs against the people causing the losses where the exposure is large enough cannot be disregarded for the benefit of Lowell and against the interests of a much larger exposure in the balance of Territory III. (Brief, pp. 21, 22.)

Commissioner Brown, in his order of September 16, 1929, did not allow this separate territorial classification for Lowell and these seven surrounding towns.

The Automobile Bureau further recommended that seven towns from Territory V of 1929 be included with the cities and towns of Territory III of 1929. (Brief, pp. 23, 24.)

The Commissioner in his order allowed three of the seven towns — Framingham, Natick and Wayland — to be included with Territory III of 1929. These three towns, with the remaining forty-one cities and towns of Territory III of 1929, were classified as a group of forty-four cities and towns into a new Territory VI, and this classification was "fixed and established" by the said order for or during the year 1930.

Territory IV of 1929.

No change was recommended by the Automobile Bureau for this group of twenty-three cities and towns comprising Fall River, New Bedford, Springfield and Worcester with their suburbs, and the Commissioner classified them into a new Territory VII, and this classification was "fixed and established" by his order of September 16, 1929, for or during the year 1930. (Brief, pp. 24, 25.)

Territory V of 1929.

With the exception of the three towns assigned to new Territory VI, as stated above, no change was made in the classification of this territory, and its classification as new Territory VIII was "fixed and established" by the Commissioner's order of September 16, 1929, for or during the year 1930. (Brief, p. 25.)

Commercial Cars.

Commercial cars are classified according to the nature of the work done, and referred to as Classes 2, 3 and 4. Within each of these classes a further division is made for load capacity, and referred to as heavy, medium and light. (Brief, p. 28.)

The Automobile Bureau recommended, and the Commissioner, by his order of September 16, 1929, "fixed and established" for or during the year 1930 six territorial classifications for commercial cars and trucks instead of three, which had been in effect for the years 1927, 1928 and 1929. (Brief, pp. 31, 32.)

Public Automobiles.

No changes were recommended by the Automobile Bureau or ordered by the Commissioner in territorial classifications or rates. (Brief, p. 36.)

Garages, Dealers and Miscellaneous Classes.

See Brief, pages 37–40.

Pure Premiums or Loss Cost.

The Automobile Bureau in its Brief submitted to the Commissioner also discusses the pure premiums or loss cost in connection with the territorial classifications.

These pure premiums or loss cost are statistically determined from the experience data, and are the basis upon which the rates or premium charges are fixed and established by the Insurance Commissioner. These insurance rates are averages, and a dependable average must have a sufficient number of risks covered for a sufficient length of time.

Most of the cities and towns in the state have not as yet enough volume of experience or exposure of cars to justify using their own pure premium or loss cost by themselves. Therefore the Automobile Bureau, when recommending the territorial classifications, recommends also to the Commissioner the average pure premiums or loss cost for each territorial classification as produced by the tabulated experience data.

The pure premiums recommended are classified for each type of car where the volume of experience or exposure warrants it. If there is insufficient exposure, then differentials are used based on the experience of other similar territories where the volume of experience or exposure is sufficient.

Expense Loading.

To produce the rates or premium charges from the "pure premiums" or the amounts paid or reserved for losses or claims it is necessary to "load" with or add to the pure premiums an amount necessary to cover the expenses of the insurance companies writing this Motor Vehicle Liability Insurance, and also allow them a reasonable profit.

Article III, section (*e*) of the Constitution of the Automobile Bureau provides for —

> The determination, upon the basis of the combined experience of stock companies, of expense loadings which shall be used for the purpose of converting the pure premiums for the several classes of motor vehicles and trailers into gross rates; . . .

The Insurance Commissioner annually orders each insurance company writing this Motor Vehicle Liability Insurance to file with him its itemized expense data for the preceding year. The form for reporting these expenses calls for the amount of earned premiums received for the calendar year and the expenses incurred for each item in dollars and cents as shown by the "Expense Sheet" below. These expense data are separately combined for the stock and non-stock insurance companies, and are submitted by the Insurance Commissioner to the Automobile Bureau to be reviewed and

analyzed by its stock company members who thereupon, by means of the Brief submitted by the Automobile Bureau to the Insurance Commissioner, recommend the expense loading, in the form of a percentage of the earned premiums for each item of expense, which they think should be adopted when the premium charges are fixed and established.

EXPENSE SHEET.

MASSACHUSETTS MOTOR VEHICLE PUBLIC LIABILITY INSURANCE POLICIES.

Name of Company .....

Total Earned Premiums for Calendar Year 1928 . . $ .....

(*a*) Statutory Coverage[1] . . . .

(*b*) Extra Territorial Coverage[1] . .....

(*c*) Excess Limits Coverage[1] . . ..

Total . . . .

Expenses Incurred on Massachusetts Motor Vehicle Public Liability Policies.

(Policies providing coverage in 1928)

	Expenses, Statutory[1] Coverage only.	Total Expenses.
1. Administration Expense	$	$
(*a*) Salaries	$	$
(*b*) Rent	$	$
(*c*) Miscellaneous Expense . . .	$	$
Total Administration Expense .	$	$
2. Expense of Investigation and Adjustment of Claims	$	$
3. Inspection Expense	$	$
4. Field Supervision Expense	$	$
5. Bureau Assessments, 1928	$	$
6. Acquisition Expense (Commissions and other Acquisition cost)	$	$
7. Taxes and Licenses and Fees . . .	$	$
8. Other Expenses — Itemize	$	$
Total Expense	$	$

For Items 1, 2, 3 and 4 please specify methods used to determine these items:

1.

2.

3.

4. Please specify the rules the company is using governing the rates of commission allowed on Massachusetts, 1929, automobile policies.

.....

Signature of Officer

.....

Title

Typewritten answers to the inquiries are preferable.

This blank duly filled in is to be returned to the Commissioner of Insurance, Room 312, State House, Boston, on or before June 20, 1929.

[1] The company is requested to show this separation if the company's records make this conveniently possible.

ITEMIZED EXPENSES.

These itemized expense data of the insurance companies filed with the Insurance Commissioner and reviewed and analyzed by the Automobile Bureau contain the following items, and under each item a brief explanatory statement is herewith made:

1. *Administration Expense.*

This covers salaries for work done in the home and branch offices, and includes underwriting, recording, accounting and all statistical work, and a percentage of the office expenses for light, rent, heat, postage, telephone, supplies, etc.

When the salaries or expenses cannot be directly allocated to the Motor Vehicle Liability Insurance coverage they are charged as a proportion of the entire Liability Insurance business of the company.

2. *Claim Expense.*

Covers claim adjusters' salaries and legal and medical expenses, fees, photographs and traveling expenses in connection with the investigation and adjustment of claims by the company's claim and legal departments.

3. *Automobile Bureau Inspection Expense.*

Covers investigation of risks, inspections made by company employees, and cost of confidential reports from inspection bureaus.

4. *Automobile Bureau Expense.*

Covers assessments and annual membership fees used for the operations of the Bureau.

5. *Acquisition and Field Supervision Expense.*

Covers commissions paid to general, regional or local agents, or to brokers.

A *general agent* is appointed by insurance companies to supervise their work in any given territory, and retains a percentage of the premiums collected as a commission for its field supervision and general office expenses. The general agent supervises the underwriting, inspection of risks, adjustments, supervision and payment of claims, collection of money from agents and brokers. A general agency is similar to an insurance company's branch office, except that the expenses of the branch office are paid by the insurance company direct.

A *regional agent* is appointed by a general agent or insurance company, and within its regional territory has the same duties and is compensated in the same way as a general agent.

Local agents are appointed by insurance companies, and are licensed by the state to write insurance with the company which appointed them. They retain a percentage of the premiums collected as a commission.

Brokers are similar to agents except that they are licensed to write insurance with any licensed insurance company. They retain a percentage of the premiums collected as a commission.

Commissions. — The commissions paid to local agents or to brokers are for the work of soliciting business, filling out application blanks, writing the policy, visiting or writing the Registrar's office, collecting premiums, reporting of premiums to the company, advising insured as to claims and their adjustment, and includes clerical work, rent, heat, light, postage, supplies, etc.

6. *Taxes, Licenses and Fees.*

Covers Federal income tax on earned premiums and state excise tax of 1 per cent on earned premiums in the case of Massachusetts corporations and 2 per cent in the case of foreign corporations. Also covers company license and other statutory fees.[1]

The Automobile Bureau, in its brief submitted to the Insurance Commissioner in addition to its recommendations as to the percentages of the earned premiums to be allowed for the above expense items, also recommends the percentage of the earned premiums to be allowed for profit.

[1] For expense figures and percentages of earned premiums recommended and established for 1927–1930, see table page 43.

APPENDIX B.

DISCUSSION OF RATES FOR 1927 BY INSURANCE COMMISSIONER, MR. MONK.[1]

The law requires that the rates fixed by the Commissioner shall be "adequate, just, reasonable and non-discriminatory."

The rates fixed have not been, and cannot be, determined with scientific exactness. There are no statistical experience figures and data obtainable from any source upon which these rates can be based with mathematical precision. This absence of experience figures and data is to be attributed to the fact that this compulsory automobile liability insurance law which restricts the claims to be covered solely to those for death and personal injuries arising from the operation of motor vehicles on the highways of Massachusetts, and requires all cars to be insured, is a radically novel law, and is the first one of its kind to be enacted anywhere. Experience figures and data are the only sound bases on which to make insurance rates, and there being none available in respect to the cost of insurance under a law of this peculiar type, it is incontestably impossible for any one at this time to fix rates which are precisely equitable and accurate.

The rates, it is plain, must be based on the cost of the insurance required by the law; that is, insurance against claims for death or personal injuries arising only in Massachusetts and solely on its highways. Costs of claims arising in other states cannot be and have not been considered.

The only available experience in respect to claims for death or personal injuries arising out of the operation of motor vehicles on the ways of the Commonwealth is that which the insurance companies now transacting business in this Commonwealth have sustained in connection with their present type of automobile liability policies.

To procure this experience I required all the liability companies now transacting business in Massachusetts to furnish

[1] From report of the Commissioner of Insurance for 1926.

schedules exhibiting the number of claims, the number of cars involved, the losses paid and incurred, and the loss and expense ratios under their present automobile liability policies in respect to claims for death or personal injuries arising out of the operation of motor vehicles on the ways of this state. It is reasonably certain that about 30 per cent of the owners of automobiles in Massachusetts are now insured against liability for death or personal injuries, so that this experience relates only to the cost of such claims under the policies issued to approximately 250,000 owners.

These statistics disclose with certainty the average amount which it has cost the companies now doing business here in respect to claims for death or personal injuries arising out of the operation of motor vehicles on the ways of the Commonwealth against the 30 per cent of the total number of the car owners who are now insured, and it is on these statistics that what is technically known as the pure premiums were calculated. These pure premiums are the average sums necessary to pay the cost of claims, but are not sufficient to cover expenses and contain no allowance for a reasonable profit.

The law requires, as stated, that the rates be adequate. This means that the premiums to be paid by the insureds to the companies must be sufficient in size to furnish enough income to the companies writing these policies to enable them to pay all valid claims and expenses. It was necessary, therefore, to add to the pure premiums referred to an amount which appeared probably to be sufficient to reimburse the companies for all expenses arising out of the transaction of business under this law, and to allow them a reasonable profit. This item included the probable cost of general administration, taxes and fees, investigation and adjustment of losses, and clerical and other services in handling applications for insurance and writing and issuing the policies and bonds.

An insurance company has no magic formula for producing money. It must receive a sufficient income from premiums to pay claims and expenses if it is to remain in a sound condition and to discharge its function, which is to pay claims. Rates which are insufficient to meet these requirements, it must be made clear, would expose claimants to financial loss by affecting the solvency of the companies. Inadequate rates would also be confiscatory and amount to the taking of the property of the companies without due process of law, and the enforcement of such rates could undoubtedly be enjoined in the

Federal courts or annulled on appeal to our state Supreme Court.

The rates, on the other hand, must be reasonable. This simply means that they must not be so large that they afford the companies an unreasonable profit, or that they are disproportionate to the actual costs and expenses incurred by the companies in fulfilling the obligations of their contracts.

The rates now charged by the companies for automobile liability insurance in Massachusetts are doubtless determined in part by the fact that only about 30 per cent of the total number of cars in Massachusetts are now insured. Under the operation of this law the number of cars insured in all probability will, it may be reasonably assumed, very greatly increase. It is estimated that about 750,000 cars will be registered and insured during the year 1927. If this number is insured it will result in an increase of approximately 200 per cent in the volume of business to be done by the companies; that is, in the number of policies or bonds issued and in the amount of the premium revenue and consequently in the number of risks exposed. Plainly, the estimated gross revenue to be received by the companies is a most material factor to be considered in determining the justness and reasonableness of the rates, giving full and due weight to the strong probability that there will be a very substantial increase in the number of valid claims which the companies will pay, and in the amount of the average claim cost.

These initial rates, I reiterate, have not been actuarially determined, and cannot, under the circumstances, be so determined by any one. They are and of necessity must be predicated largely upon approximations. The accuracy of my estimates and assumptions, and of my judgment as to the probabilities of the future experience on which the adequacy and reasonableness or the inadequacy and unreasonableness of these rates depend, can be definitely demonstrated only by the actual experience of the future.

No one knows, and no one can know, at this time what the companies will be called upon to pay for claims under this law. It is undoubtedly safe to assume, and I do assume, that the number of valid claims will very materially increase. It may be predicted, and I assume, as stated, that the number of cars registered and insured during 1927 will not be substantially less than the number now registered. It is hardly reasonable to assume, and I do not assume, that there will

be a great increase in the number of persons killed or injured in Massachusetts by motor vehicles under circumstances imposing legal liability on the operator. All or one or more of these and other considerations, especially the amount of the cost of future claims, all of which depend on the actual facts to occur in the future, will unquestionably affect the rates, adversely or favorably.

The impossibility of obtaining any definite knowledge in respect to the operation of these and similar important factors, which render the determination of these rates at this time largely a matter of judgment, is plainly recognized by the law which provides that from time to time the Commissioner may either increase or decrease the rates, as experience develops, in order that they may be adequate and reasonable. A revision of these rates will, of course, become necessary if and when the experience to be developed in the future establishes that they are in whole or in part too high or too low. It is believed that a period of at least five years' actual operation of this law will be required to stabilize the rates.

APPENDIX C.

A STUDY OF THE STATISTICAL TABLES OF THE BUSINESS OF THE SUPERIOR COURT, WITH SPECIAL REFERENCE TO THE EFFECT OF MOTOR VEHICLE LITIGATION UNDER THE PRESENT LAW.

(Submitted to the Commission by Dunbar F. Carpenter, Esq.)

If, as seems to me arguable, conditions in the Superior Court have an intimate relation to the agitation over the Compulsory Motor Insurance Law, it is an opportune moment, now that the special commission on that subject is sitting, to consider, in the light of statistics, the situation of the Court with particular attention to motor tort litigation.

It should be understood that the figures given in the following tables are not absolutely accurate.[1] They are, however, the best available, and, inasmuch as we are looking only at the general trend and not striving for mathematical accuracy, the margin of error, if any, is not sufficient to impair their value for our purposes.

The statistics run to June 30 of each year. For the sake of brevity, they will generally be referred to as figures for the year 1929, or whatever year is stated; it being understood, however, that the year ends June 30, and not December 31.

[1] The figures are taken from the returns of the clerks of court to the Secretary of the Commonwealth, and from tables printed in the Appendices, to the fourth and fifth Reports of the Judicial Council.

TABLE I. — *Civil Cases Superior Court Entries.*

YEAR ENDING —	NEW CASES ENTERED.		
	Jury.	Jury Waived.	Equity.
June 30, 1910	8,167	2,701	1,599
June 30, 1920	11,790	3,848	2,208
June 30, 1924	16,899	5,085	3,230
June 30, 1925	18,117	4,973	3,009
June 30, 1926	18,282	4,941	3,316
June 30, 1927	19,403	5,110	3,655
June 30, 1928	27,377	5,256	3,392
June 30, 1929	27,592	5,743	3,502

Table I shows the steadily increasing number of new cases entered yearly. Observe that while the number of jury-waived and equity cases each increased about 100 per cent between 1910 and 1929, the number of jury entries went up 239 per cent in that period.

Compulsory motor car insurance began January 1, 1927. Its effect, as shown in the marked increase of jury entries for 1928 and 1929, seems to have been immediate. In 1928, the first full court year after compulsory insurance, the jury cases entered amounted to 9,000 more than in 1926, the last full court year prior to compulsory insurance, an increase of 50 per cent.

The pace was held in 1929, in which year the increase was also 50 per cent over the cases entered in 1926.

TABLE II. — *Law Entries in Suffolk.*

YEAR.	Number of Law Entries.
1913	6,278
1921	9,090
1929	16,562

Between 1913 and 1921 the law entries in Suffolk increased 62 per cent, and between 1921 and 1929, 82 per cent, an increase for the eighteen years of 163 per cent.

Though there are no official statistics prior to 1905, we can get an idea of the situation in 1902 by glancing at Table III. This document, compiled by the late J. J. Feely, was found among the papers of the late Mr. Justice Braley.

TABLE III. — *Civil Cases Pending in Superior Court in 1902.*

COUNTIES.	Civil Cases Pending.	Number of Cases awaiting Trial.	Yearly Increase for Five Years (Per Cent).	Cases Entered for the Last Year.
Suffolk	13,975	6,000	10	6,922
Middlesex	4,000	3,000	5	2,100
Essex	2,000	2,000	3	1,279
Worcester	1,734	1,500	(2 for 1901) –	956
Norfolk	950	350	9	654
Bristol	1,187	600	(9 for 1901)	773
Hampden	1,175	1,055	4	805
Plymouth	536	536	10	442
Berkshire	400	400	10	310
Hampshire	259	259	Slight	177
Barnstable	160	160	10	85
Dukes	41	20	–	24
Nantucket	25	25	4	35
Franklin	–	–	10	166
Total	26,493	15,905	9 (Av.)	14,728

The number of law cases reported as awaiting trial on June 30, 1929, was 67,393, but this figure includes 25,556 inactive cases subject to dismissal under Rule 62.[1] Deducting all the inactive cases, though a certain number, estimated at 15 per

[1] Common law, Rule 62, as amended April 26, 1926, to take effect August 2, 1926, provides that in each June in Suffolk and in each September in the other counties, all actions, law, equity and divorce, which have remained quiescent for two years, shall be marked inactive by the clerk, and notice thereof sent to counsel; that if, within three years after a case has been marked inactive, it has not been tried or disposed of, it shall be dismissed and judgment or decree of dismissal entered on the day next following the expiration of said three years, without further notice or order.

Owing to the amendment of the rule no cases were dismissed in 1926, 1927 and 1928. These cases have accumulated, as shown in Table IV.

The cases in outside counties marked inactive in September, 1926, were dismissed in September, 1929.

The first Suffolk cases marked inactive under Rule 62 as amended will be dismissed in June, 1930.

The first batch of cases dismissed under Rule 62 as amended will appear in the court's statistics for the year ending June 30, 1930, comprising the cases in Table IV marked inactive on June 30, 1927.

cent, will probably be restored to the active list, there remain 41,800 law cases awaiting trial. In 1902 the number of cases awaiting trial was, as appears in Table III, 15,905. The increase in twenty-seven years of law cases awaiting trial is 25,900 cases or 162 per cent; or, to put it in another way, there were only 38 per cent as many law cases awaiting trial in 1902 as in 1929.

In 1902 there were eighteen justices; in 1929, thirty-two. While the number of jury entries alone has increased in this period 239 per cent, and the number of law cases awaiting trial 162 per cent, the number of judges has grown only 77 per cent.

Apparently it is expected that the fourteen additional judges, created since 1902, can take care of the 200 per cent increase in jury entries and of the 100 per cent increase in jury-waived and equity cases.

The extraordinarily large number of cases settled, for only about 2,500 are tried annually, and the number which become inactive are shown in Table IV.

TABLE IV. — *Number Disposed of or Marked Inactive.*

Year Ending —	Number disposed of by Agreement of Parties or Order of the Court.			Marked Inactive at Any Time and Subject to Dismissal.		
	Jury.	Jury Waived.	Equity.	Jury.	Jury Waived.	Equity.
June 30, 1924 . . .	15,813	5,413	1,510	–	–	–
June 30, 1925 . . .	14,606	4,410	3,158	–	–	–
June 30, 1926 . . .	15,632	4,018	6,140	–	–	–
June 30, 1927 . . .	15,043	3,282	2,275	9,664	3,439	2,142
June 30, 1928 . . .	18,050	3,802	1,959	14,804	3,658	1,306
June 30, 1929 . . .	19,036	3,732	1,933	19,268	6,293	5,364

VERDICTS, FINDINGS, AND AMOUNTS THEREOF.

In our study of the state of the docket, it is of importance to ascertain what the moving litigant is likely to obtain as a result of his lawsuit. This information is given in Tables V and VI. These tables include every verdict and finding throughout the entire Commonwealth, as listed by the clerks of court, or compiled from the court records for the Judicial Council.

TABLE V. — *Verdicts and Findings for Year Ending June 30, 1929.*

Torts.

COUNTY.	JURY.				JURY WAIVED.			
	MOTOR TORTS.		OTHER TORTS.		MOTOR TORTS.		OTHER TORTS.	
	Plaintiff.	Defendant.	Plaintiff.	Defendant.	Plaintiff.	Defendant.	Plaintiff.	Defendant.
Barnstable	–	1	4	–	–	–	–	–
Berkshire	17	11	2	2	1	–	1	–
Bristol	14	32	4	9	6	–	1	–
Dukes	–	–	–	–	–	–	–	–
Essex	43	66	29	22	7	4	5	4
Franklin	9	9	1	–	1	–	–	–
Hampden	65	34	6	17	2	1	3	1
Hampshire	7	7	3	3	–	–	–	–
Middlesex	107	131	40	49	11	5	4	7
Nantucket	–	–	–	–	–	–	–	–
Norfolk	42	26	3	5	8	3	–	–
Plymouth	19	7	5	5	1	–	–	1
Suffolk	–[1]	–	289	291	–	–	61	17
Worcester	89	36	14	18	9	3	–	2
Total	412	360	400	421	46	16	75	32

Grand total, 1,762.

[1] "Motor Torts" in Suffolk are not segregated, but are included in "Other Torts."

Contracts.

COUNTY.	JURY.		JURY WAIVED.	
	Plaintiff.	Defendant.	Plaintiff.	Defendant.
Barnstable	–	–	–	–
Berkshire	3	1	3	–
Bristol	12	–	3	3
Dukes	1	–	–	–
Essex	29	12	5	–
Franklin	2	2	4	–
Hampden	9	11	5	2
Hampshire	4	6	–	–
Middlesex	49	20	8	8
Nantucket	–	–	–	–
Norfolk	9	2	7	1
Plymouth	9	6	2	–
Suffolk	192	114	25	23
Worcester	27	8	14	8
Total	346	182	76	45

Grand total, 649.

Grand total for torts and contracts, 2,411.

TABLE VI. — *Summary and Analysis of Verdicts and Findings for the Years 1928 and 1929.*

Torts.

JURY.

	Motor Torts (exclusive of Suffolk).				Other Torts (including Suffolk Motor Torts).			
	Verdicts for Plaintiff.	Verdicts for Defendant.	Total Verdicts.	Percentage of Verdicts for Plaintiff.	Verdicts for Plaintiff.	Verdicts for Defendant.	Total Verdicts.	Percentage of Verdicts for Plaintiff.
1928 . .	268	257	525	51	616	616	1,232	50
1929 . .	412	360	772	53	400	421	821	48
JURY WAIVED.								
1928 . .	131	19	150	87	68	25	93	73
1929 . .	46	16	62	74	75	32	107	70

Contracts.

	Jury.				Jury Waived.			
1928 . .	444	215	659	67	98	38	136	72
1929 . .	346	182	528	65	76	45	121	63

Table VII is a summary of Table VI, and includes the corresponding figures for 1928.

TABLE VII. — *Summary of Table VI.*

	Total Verdicts for Plaintiffs.	Total Verdicts for Defendants.	Percentage of Verdicts for Plaintiffs.	Total Findings for Plaintiffs.	Total Findings for Defendants.	Percentage of Findings for Plaintiffs.
1928	1,328	1,088	55	297	82	78
1929	1,158	963	54	197	93	68

TABLE VII — *Continued.*

	Total Verdicts and Findings for Plaintiffs.	Total Verdicts and Findings for Defendants.	Total Verdicts and Findings.	Percentage of Verdicts and Findings for Plaintiffs.	Percentage of Verdicts and Findings for Defendants.
1928	1,625	1,170	2,795	58	42
1929	1,355	1,056	2,411	56	44

The percentages of verdicts and findings for plaintiffs in 1929 show no noteworthy disparity from 1928, and rather tend to strengthen the conclusion that juries are not particularly favorable to plaintiffs in tort cases, as the figures for both years show almost an even break between the parties in tort litigation.

Having learned that the probable result of trial is about an even chance either way, we may do well to ascertain how much the fortunate plaintiff is likely to recover.

The amounts of all the verdicts and findings for the years 1928 and 1929 are given in Table VIII.

TABLE VIII. — *Verdicts or Findings for Plaintiffs.*

Amount of Verdict or Finding.

	$1 to $500.	$501 to $1,000.	$1,001 to $2,500.	$2,501 to $5,000.	$5,001 to $7,500.	$7,501 to $10,000.	$10,000 to $20,000.	Over $20,000.	Totals.
Torts.									
Jury:									
1928 motor torts	137	47	40	26	8	7	3	–	268
1929 motor torts	176	73	74	51	20	3	14	1	412
1928 other torts	274	94	132	65	24	17	10	4	620
1929 other torts	180	65	55	66	15	9	9	1	400
Jury waived:									
1928 motor torts	53	28	26	12	5	2	3	–	129
1929 motor torts	20	13	8	5	–	–	–	–	46
1928 other torts	49	11	4	1	1	1	1	–	68
1929 other torts	43	12	9	7	2	1	1	–	75
Contracts.									
1928 jury	210	99	87	26	8	5	6	2	443
1929 jury	140	78	75	29	6	4	4	1	346
1928 jury waived	59	16	14	7	3	–	–	–	99
1929 jury waived	28	14	21	10	–	–	–	3	76
Totals (1928)	782	295	303	137	49	32	23	6	1,627
Totals (1929)	596	255	242	168	43	17	28	6	1,355

The percentages of the 1,627 verdicts and findings in 1928, and the 1,355 in 1929 under $500, under $1,000 and over $1,000, are shown in Table IX.

TABLE IX. — *Percentages of Verdicts or Findings under $500, and under and over $1,000.*

	$500 or Under (Per Cent).	$1,000 or Under (Per Cent).	Over $1,000 (Per Cent).
Torts.			
Jury:			
1928 motor torts	51	69	31
1929 motor torts	42	60	40
1928 other torts	44	59	41
1929 other torts	45	60	40
Jury waived:			
1928 motor torts	41	62	38
1929 motor torts	43	71	29
1928 other torts	72	88	12
1929 other torts	57	73	27
Contracts.			
1928 jury	47	70	30
1929 jury	43	66	34
1928 jury waived	60	76	24
1929 jury waived	37	55	45

Of the 1,355 verdicts and findings for plaintiffs, 851, or 63 per cent, are for amounts not in excess of $1,000; 410, or 30 per cent, run from $1,001 to $5,000; while only 94, or 7 per cent, are for sums in excess of $5,000.

The percentages of verdicts and findings up to $500, up to $1,000, and in excess of $1,000 do not vary significantly from those of the previous year. It begins to look as though it could be predicted with a fair degree of accuracy that about two-thirds of the recoveries in tort cases will not exceed $1,000.

One does not get the impression that litigation, especially that of the motor variety, is a particularly lucrative source of revenue to the judgment creditor. Possibly the joy of battle is worth the cost to all concerned, including the Commonwealth, which furnishes upon the payment of only $3 per fight a clerk and assistants, a clerk's office and a motion session to enable the contestants to warm up, a battlefield, in the shape of a court room, one umpire, denominated a judge, one clerk, a stenographer, twelve jurymen, one or more bailiffs, heat, light, and paper for the lawyers.

The Capacity of the Neck of the Bottle.

The inflow of cases has importance only in its relation to the outflow. We come now to consider with particularity what the outflow amounts to.

This can be measured in two ways, and the measurements compared with each other. The two methods are, first, determination of the time elapsing between date of writ and trial; and second, the number of cases tried annually.

The time lapsing between date of writ and time of trial for the years 1902, 1925, and 1929 is set forth in Table X.

Table X. — *Time between Date of Writ and Trial.*

Civil Jury Cases.

County.	Year.	Average Time between Date of Writ and Trial.
Barnstable	1902[1]	– 6 mos.
	1925[2]	1 yr. 1 mo.
	1929[3]	2 yrs. 6 mos.
Berkshire	1902	1 yr. –
	1925	2 yrs. 9 mos.
	1929	1 yr. 2 mos.
Bristol	1902	– 6 mos.
Taunton	1925	3 yrs. 3 mos.
	1929	1 yr. 10 mos.
New Bedford	1925	3 yrs. 9 mos.
	1929	2 yrs. 7 mos.
Fall River	1925	3 yrs. 5 mos.
	1929	1 yr. 4 mos.
Essex	1902	– 6 mos.
Salem	1925	3 yrs. 7 mos.
	1929	2 yrs. 1 mo.
Lawrence	1925	3 yrs. 2 mos.
	1929	1 yr. 3⅗ mos.
Newburyport	1925	2 yrs. 9 mos.
	1929	3 yrs. 5 mos.

[1] Compiled by the late J. J. Feely, in 1902.
[2] First Report, Judicial Council, p. 122.
[3] Furnished by Chief Justice Hall.

TABLE X. — *Time between Date of Writ and Trial* — Continued.

Civil Jury Cases — Continued.

County.	Year.	Average Time between Date of Writ and Trial.
Franklin	1902	–
	1925	– 6 mos.
	1929	– 8 mos.
Hampden	1902	– 8 mos.
	1925	2 yrs. 5 mos.
	1929	1 yr. 7 mos.
Hampshire	1902	– 9 mos.
	1925	– 10 mos.
	1929	2 yrs. 3 mos.
Middlesex	1902	15 mos. 2 yrs.
Cambridge	1925	2 yrs. –
	1929	2 yrs. 1 mo.
Lowell	1925	1 yr. 4 mos.
	1929	1 yr. 3 mos.
Norfolk	1902	1 yr. –
	1925	1 yr. 1 mo.
	1929	2 yrs. –
Plymouth	1902	– 3 mos.
	1925	2 yrs. 1 mo.
Plymouth	1929	1 yr. 8 mos.
Brockton	1929	2 yrs. –
Suffolk	1902	1 yr. 6 mos.
	1925	2 yrs. 5 mos.
	1929	2 yrs. 3½ mos.
Worcester	1902	– 6 mos.
Worcester	1925	2 yrs. 8 mos.
	1929	1 yr. 9½ mos.
Fitchburg	1925	1 yr. 8 mos.
	1929	1 yr. 9 mos.

It appears from Table X that in every county, eliminating Dukes and Nantucket, for which the figures do not seem to be reported in either 1925 or 1929, the time between date of writ and trial was less in 1902 than in either 1925 or 1929.

In 1902, when the court had eighteen justices, there were 14,644 civil cases entered. In 1929, with a court of thirty-two, there were 33,159 law cases alone entered, also 3,502 equity and 365 divorce cases, a total of 37,026. While the bench has increased 77 per cent since 1902, the number of civil cases entered in 1929 has grown 152 per cent. Small wonder that the docket has fallen behind!

What about the future? Table X shows the status on July 1, 1929. It cannot be taken as guide to the status on July 1, 1930, and succeeding years, because of the sharp increase in the number of jury cases entered in 1928 and 1929.

Suffolk furnishing approximately one-half the law cases entered in 1928 and 1929, as it did in 1902, is the controlling factor. Let us glance at conditions in Suffolk. The jury entries for 1927 in that county were 9,700. For simplicity all figures will be given in round numbers to the nearest hundred. In each of the two succeeding years, the jury entries were 12,500, an increase of 29 per cent. Since, on July 1, 1929, the most recent date of writ of a jury case on the general list actually tried was June 18, 1927, the effect of the 29 per cent increase of entries in 1928 and 1929 had not then been felt. How great the effect will be cannot be foretold with certainty, but there is sufficient data to allow an estimate. Assuming that the ratio of cases disposed of, either by agreement of the parties or by order of court, to the total number of cases entered, and the number of sittings, remain about the same as in the past, then the 29 per cent increase of cases in 1928 over 1927 will postpone the time of trial of cases entered in 1929 by 29 per cent. On July 1, 1929, none of the 1928 cases having then been reached, the average time between date of writ and trial was 27½ months in Suffolk. A 29 per cent increase in the entries for 1928 suggests that it will take 29 per cent longer to clear the docket of 1928 cases, so that, before the 1929 cases come on to be tried, the time elapsing between date of writ and time of trial of the 1928 cases will be not 27½ months, but that period plus 29 per cent, or 8 months, totaling 35½ months. The lag between date of writ and time of trial will creep up gradually, from month to

month. Its full effect will not manifest itself for a couple of years.

As to the 1929 cases, which also showed an increase of 29 per cent over the 1927 entries, the same process will be repeated, so that by the time the 1930 cases are taken up, the court seems likely to be another eight months behind.

The same line of reasoning applies to the state generally, for in all counties there has been a substantial increase of entries in the past two years, the result, of course, of the Compulsory Insurance Act. Even Nantucket, which had only one jury entry in 1927, showed eleven in each of the two following years. In fact, the increase of jury entries in 1928 and 1929 in all the counties seems to be 41 per cent over 1927, considerably larger than in Suffolk. It seems to follow that the time between date of writ and trial will extend more rapidly in the other counties than in Suffolk.

The estimate as to the widening margin between date of writ and trial in Suffolk is not to be considered a hard-and-fast prediction. Its chief purpose is to illustrate what is, indeed, a patent fact, that, other things remaining the same, an increase of 41 per cent in cases entered throughout the state must inevitably, very materially, add to the congestion of the docket.

Number of Cases Tried.

Attention has been called to the number of law cases pending and to the vast increase in the number entered during the last two years. The significance of the annual inflow of cases, it is worth repeating, depends entirely upon the annual outflow. If the outlet can take care of the inflow, there is no problem. The neck of the bottle is, therefore, the number of cases tried annually by the court. What is that number? In my former article on this subject figures were given purporting to show the number of cases tried each year for the past five years. These figures were taken from the Secretary of State's report which is compiled by him from statistics sent to him by the various clerks of court. It appears therefrom that for the year ending June 30, 1927, 2,672 jury cases and 669 jury-waived cases were tried. It has recently been learned that in some instances the figures sent to the Secretary of State, for which he is not responsible, include not merely the cases actually tried, but all cases appearing upon the trial list, whether tried, settled, continued or otherwise disposed of.

Therefore the figures in the annual report of the Secretary of State are not entirely accurate. We can better ascertain the number tried in another way. We have the exact number of verdicts and findings for both plaintiffs and defendants in the last two years. These figures show the following results:

TABLE XI. — *Number of Cases Tried during Year.*

YEAR.	Jury.	Jury Waived.
1928	2,416	379
1929	2,121	290

These figures do not take into account all the cases actually brought on for trial. There are always a number of disagreements in jury cases, amounting in 1929 to 73, and some cases are undoubtedly settled during the trial. It appears, then, that the jury cases actually tried in 1928 and 1929 amount to less than 10 per cent of the new cases entered in each of those years. The number of jury-waived cases tried is a little over 5 per cent of the entries. If the Superior Court is to keep abreast of its annual docket, about 90 per cent of the cases entered must be disposed of in some other way than by trial. This situation justifies the query whether trial by jury does now obtain in Massachusetts. If we should wipe out the entire docket, as of last June, and start afresh with no cases pending, and if, out of the cases entered for the year beginning July 1, 1929, nine out of every ten cases entered should be settled or otherwise dismissed, then the Superior Court would just about clear the docket every year. We like to imagine that every man can, if he wishes, have his case tried to a jury, but the facts are otherwise. The neck of the bottle is so small that there trickles through only an insignificant stream in comparison with the regularly augmenting reservoir of cases pressing for trial.

To avoid a possible misunderstanding, it should be stated that there is no thought of placing upon the shoulders of an overburdened court any imputation for the delay in getting to trial. If the thirty-two justices did nothing but try civil jury cases, they could hardly dispose of more than 5,000 cases a year.

In 1929 the court devoted no less than seventeen hundred and fifty-three days to criminal business and tried 2,482

criminal cases. Even at that there were 2,497 criminal cases awaiting trial on June 30, 1929.

In addition there are the motion session, the equity work, and the innumerable unconsidered trifles, including motions for new trials and settling bills of exceptions, all demanding much time and attention.

Conclusions.

On the one hand it appears inevitable that the time between the entry of a case and its trial must inevitably lengthen materially each year, with the very strong probability that the day is not far distant when five years will not see a newborn case mature into trial.

On the other hand, it is apparent that the court cannot, as organized today, try more than 2,500 jury cases a year. The figures showing number of cases tried as published by the Secretary of State for the five years beginning with June 30, 1924, though probably overgenerous, average only 2,700 jury cases and 600 jury-waived cases a year.

The significance of the trial output in relation to the inflow should continuously be kept in mind throughout this discussion.

Appendix D.

A PART OF THE REPORT OF THE SPECIAL COMMITTEE ON PROFESSIONAL ABUSES IN ACCIDENT LITIGATION.[1]

This committee has not attempted, in the limited time at its disposal since its appointment (June to October), to make a complete survey of the country in an effort to locate all the centers where the practice of ambulance chasing flourishes. The committee contains representatives from New York, Philadelphia, Chicago, Boston, Baltimore, Pittsburgh, Cleveland, Detroit, Milwaukee, St. Louis, New Orleans, Denver and Los Angeles. A number of the members, by reason of their prior participation in investigations of these practices, conducted by their local Bar Associations, had already acquired intimate knowledge of the various professional abuses incident to the organized solicitation of contingent fee accident litigation. In the other cities represented, the members of the committee, in co-operation with their local Bar Associations, have made special investigations for the purpose of this report.

Based on the above, the committee believes itself to be in a position to advise the association, with substantial accuracy, of the general extent of the practice, the abuses resulting therefrom, the remedies heretofore adopted, and those likely to result in its abolition.

The practice of organized ambulance chasing is confined to the congested centers and their environs, where the volume of accident litigation is sufficient to make profitable the systematic solicitation of such cases, and where the Bar is so large and so incoherent as apparently to relax the feeling of personal responsibility on the part of the better element for the delinquencies of their less conscientious brethren.

Wherever the practice is found, substantially the same abuses result. The practice of law, under such circumstances, ceases to be a profession, and becomes an organized conspiracy, a disgrace to the Bar which permits it to develop in its midst.

[1] Submitted at Conference of Bar Association Delegates, Memphis, Tennessee, October 21, 1929.

Employees of such accident lawyers spend their entire time in searching out persons who have been or who can plausibly be made to appear to have been implicated in accidents, and in securing for their employers powers of attorney to prosecute such real or fabricated claims. Such employees are usually compensated by a percentage of the fees obtained from the cases which they thus obtain. They enlist the help of all persons in a position to have prompt information of the happening of accidents, — members of the police force, ambulance drivers and telephone operators, low-class physicians, local politicians, hospital internes, newspaper reporters, and agents of accident insurance companies. To all such likely lead men, the attorney, directly or through his paid agents, holds out the well-founded assurance that all persons who are directly instrumental in securing for him a productive power of attorney will be properly compensated therefor.

Such compensation varies with the importance of the lead man and with his potentiality for further assistance. It is usually payable only on the successful conclusion of the case, and is in a sense "voluntary" on the part of the attorney. Its assurance generally takes a form sufficiently vague to enable the attorney to deny that he has ever promised any one money or anything of value to induce such party to procure for him a power of attorney. It is based on the past practice of the attorney in "voluntarily" making such compensation, and on the knowledge that if such compensation is not forthcoming on the successful conclusion of the instant case, future claims in the control of the lead man will go to other accident lawyers having a more consistent reputation for liberality.

The paid solicitors — known as runners — employed by the attorneys engaged in this practice are usually unscrupulous men of a low type, and are known to be such by the lawyers who employ them, although such lawyers always cultivate a deliberate ignorance of their activities. They employ all sorts of ingenious subterfuges to entrap and to excite the cupidity of their credulous and ignorant prospects. Most of them carry around newspaper accounts of the large verdicts which their employers have obtained, with photostat facsimiles of large checks which have been paid by them to clients in totally unrelated cases, creating by the exhibition thereof to their prospects the improper inference that similar results will be forthcoming in the solicited case. With no accurate knowledge of the legal possibilities of the case, and in disregard of what

little knowledge they in fact have, they habitually promise results far in excess of any for which the sanguine lawyer could hope. Nor do they hesitate to disparage or defame any other attorney whom the prospective client may have in mind or whom he may have already retained.

Many of the lawyers actively engaged in the practice of soliciting accident claims continue such practices against their real desire to refrain therefrom, particularly those with established reputations for efficiency in handling such litigation, knowing that so long as the Bar and the courts allow their competitors to engage in such practices they must themselves employ them or lose all their business.

Side by side with the ambulance chasing lawyers there always develops a group of so-called independent adjusters, not members of the Bar. These men, who may be termed runners-at-large, make a business of searching out accident claimants and securing powers of attorney to settle their claims. Those which they are unable to settle they peddle among the accident lawyers at the highest price obtainable. Their tendency to frame fake claims is unrestrained by fear of disbarment. Their desire to avoid splitting their compensation with a lawyer often leads them to settle sound claims to the great disadvantage of the "client."

Such organized solicitation of accident claims, conducted by such type of men, inevitably results in the manufacture of fake claims, in the gross exaggeration of scratches and bruises to the appearance of major injuries, and in the fraudulent attempt to attribute real injuries or ailments to accidents which really had no causal relation to them — all by means of perjured testimony, usually in collusion with one or more of a class of physicians who make a practice, for a contingent compensation, of giving such expert testimony as will meet the necessities of the case.

As a result of the multiplication of accident claims, real as well as fabricated, the court calendars have become so congested as very seriously to interfere with the effective administration of justice. Innumerable accident cases are instituted and placed by the ambulance chasers on the court lists with no expectation of bringing them to trial, but merely in the hope of effecting a small settlement on a nuisance value basis, or, in many cases, to advertise themselves as extensively engaged in the trial of such cases.

Encouragement is given to the bringing of such fake suits

by the practice on the part of insurance companies of settling them for small sums in order to prevent their manipulation into larger claims. The insurance companies are also led to make settlements in innumerable cases, which they know to be unsound, by the insistence on the part of their policy writers that the assured be relieved of the annoyance of litigation, and by the fact that the insurance law requires the increase of the reserve to cover all asserted and open claims.

Lawyers engaged in the solicitation of accident claims contend that this is necessary for the protection of ignorant and helpless claimants from the adjusters for the insurance companies and utilities, who, unless the claimant be promptly protected by a lawyer, may secure a bedside release for an inadequate amount. This, however, is a mere attempted excuse, and not a justification. The defendant's adjusters seek to justify their activity upon the ground that unless the adjuster is the first to arrive, the claim will be promptly snapped up by an unscrupulous lawyer in whose hands a mere minor injury will shortly become a serious disability. That, too, is but an excuse and not a justification. The spectacle of the ambulance chaser and the claim adjuster racing to the bedside of the injured man for contracts or releases is an outrage on decency, disgusting to the average man and a disgrace to the profession.

Attorneys engaged in such practices do not hesitate, after they have successfully manipulated the facts so as to exact a fraudulent recovery from defendant, to defraud their clients of their proper proportion thereof by falsely exaggerating the expenses or by misrepresenting the amount collected. The organized practice of contingent fee accident litigation is replete with instances of padded expense bills, the use of forged releases, the concealment from the client of the fact of the recovery, as well as the exaction of an exorbitant percentage thereof out of all proportion to the services actually rendered. Cases are handled and settled in groups in the interest of the lawyer rather than of the client, the former regarding himself as having a vested interest in the case superior to that of the client.

The gross professional abuses which are thus always attendant on the organized solicitation of accident claims are too well known to the profession to require further elaboration. As heretofore stated, they do not exist generally throughout the country, but are confined to the large cities. They would never

have developed even in these few centers if the local Bar had done its full duty to the public and to the profession in keeping its house in order.

In New York, Philadelphia, Cleveland and Milwaukee the Bar Associations have recently conducted exhaustive investigations disclosing in each case a widespread organized system of the solicitation of accident claims, with all the attendant abuses above enumerated.

In New York the investigation was conducted under the immediate supervision of Justice Wasservogel, assigned to such duty by the Appellate Division on petition of the Bar Association. Aided by the statute making solicitation a crime, the system was thoroughly exposed and disciplinary measures recommended against seventy-four offenders. Judge Wasservogel's exhaustive report recommended statutory amendments, including those requiring all contingent fees to be supervised by the court, limiting such to 33⅓ per cent, providing court supervision over all settlements of accident claims, making void contracts of retainer or releases obtained in hospitals or within fifteen days after the accident. He also recommended the further study of a compensation act applicable to injuries by power vehicles, irrespective of negligence.

Following Judge Wasservogel's report, the Appellate Division enacted rules of court following a number of our suggestions, including rules prohibiting the solicitation or purchase of retainers or of professional employment; requiring the filing in court of retainers in personal injury cases; requiring settlements with clients in each case within ten days after receipt, with a written statement of expenses and fee; making contingent fees subject to court approval; prohibiting group settlements; prohibiting attorneys from dealing with an adverse party represented by counsel; requiring the preservation of records by accident attorneys; and providing for investigations by the court of all phases of accident litigation and of the abuses connected therewith.

A number of the seventy-four proceedings against the offending lawyers have been heard before the referees and decisions rendered, but the whole matter is being held for final announcement until the reports of all cases are completed, which it is expected may be within the next month.

In Philadelphia the committee on censors of the Bar Association was fortified by a statute authorizing the issue of subpœnas by the court at the instance of the chairman of the

committee in cases involving the unprofessional conduct of attorneys under investigation, the mere existence of which statute made its employment unnecessary.

In Philadelphia, prior to the 1928 investigation, although the canons of the law association had long condemned all forms of solicitation, no statute or rule of court forbade this, and the practice had been allowed by the Bar and the courts to develop until all the attorneys engaged extensively in accident practice were habitually compensating, directly or indirectly, the persons who brought them business. The Philadelphia committee considered it both fair and wise to refrain from disciplinary action based on past solicitation alone. In the case of eight accident lawyers found to have been guilty of fraud, conspiracy, subornation or embezzlement from their clients in solicited cases, the committee instituted disciplinary proceedings resulting in each case in the permanent disbarment of the offending lawyer. The local courts, at the suggestion of the committee, adopted new rules of court applicable to accident cases, specifically forbidding the direct or indirect purchase of claims, requiring itemized written statements of disbursements to the clients, retaining control over the amount of contingent fees in disputed cases, and prohibiting the payment by attorneys of contingent compensation to physicians. These rules were made prospective in their operation, and have resulted in the reduction of solicitation and of the resultant abuses to the minimum which can be reasonably hoped for in any large city.

In Milwaukee, after a thorough investigation conducted by the court in 1926 and 1927, on petition of the Bar Association, vigorous steps were taken against offending attorneys resulting in the effective breaking up of the unprofessional practices. In July, 1929, one of the leading ambulance chasers was suspended. Statutory amendments were adopted making punishable by fine and disbarment the giving of compensation for securing business or the splitting of fees with one not an attorney (sec. 256,45).

At the conclusion of the Cleveland investigation in the spring of this year a petition was filed in the Supreme Court suggesting the adoption of rules of court, including one prohibiting compensation for securing litigation. These the court has still under advisement.

In Detroit the court, acting as a special Grand Jury, in 1927 made an elaborate investigation of the abuses incident to

accident litigation, and recommended the situation to the attention of the prosecuting attorney, but nothing further has apparently been done to clear up the situation.

In Baltimore the Bar Association last year made a survey of the current practices in connection with accident litigation, and found that while there was some casual and indirect solicitation, there was no organized solicitation through runners, and no professional abuses so serious or widespread as to require drastic or general action.

In Chicago, Los Angeles and San Francisco similar investigations have been or are about to be begun by the Bar Associations.

In Boston, St. Louis and Pittsburgh no similar action has apparently as yet been actively started.

The members of this committee from Denver and New Orleans report the absence in those cities of any organized practice of solicitation.

The same professional abuses, which have thus been found prevalent in the cities named, probably exist, to a greater or less degree, in the other large cities, but are not found, to any serious extent, in the less congested centers, although the spread of motor transit has extended the scope of activity of the city ambulance chaser farther and farther into the environs of his headquarters, and his runners now ply their trade well into the outlying districts.

Contingent Fees.

This committee does not advocate the total abolition of contingent fees in accident cases, believing that such a drastic position would work a hardship on the large proportion of persons injured in accidents who are financially unable to pay fees or even necessary expenses except out of the amount recovered. The committee recommends that the Special Committee on Supplements to Canons of Professional Ethics reconsider Canon 42 of the Association as applied to accident cases.

While in particular localities it may be advisable to limit contingent fees to 33⅓ per cent (as in New York) or to some other proper percentage, it will, it is believed, generally be sufficient to provide by rule of court that all such fees are subject to regulation of the court in case the client considers the charge exorbitant. While the 50 per cent so often exacted

in such cases is often grossly excessive, in cases involving extensive litigation and resulting in a small judgment, a percentage greater than 33⅓ per cent is often justified, while in large cases, promptly settled without litigation, a smaller charge would be proper.

While it is impossible, from available data, to state accurately what average percentage of the total recovery throughout the country in accident cases is absorbed by the attorney and his employees for fees and expenses, the Philadelphia committee made an analysis of the books of 85 lawyers engaged extensively in accident practice, in 537 representative cases, of which 69 were litigated cases and 468 were settled before trial. Of the total of $228,773.59 collected from the defendants in the 69 litigated cases, the clients received $112,296.07, or 49.08 per cent. In the 468 cases settled before trial for a total of $480,986.21, the clients received $248,974.38, or 51.76 per cent. The amounts paid by the lawyers to runners and lead men for procuring these cases averaged about 15 per cent of the total recoveries, or about $107,500 out of a total of $709,759.80. The total legitimate expenses were $64,332.70. The total lawyers' fees deducted were $284,156.65, or 40.3 per cent, out of which they paid $107,500 for procuring the business, leaving about $175,000, or about 25 per cent of the total gross recoveries, to cover fees and proper office expenses.

It is believed that wherever the practice of ambulance chasing flourishes, the successful litigant ultimately receives but about half of the amount paid him by the defendant. This recovery is obtained often after years of negotiation or litigation, attended by loss of time, nervous strain and stress of conscience. Where, as frequently happens, the claimant is in straitened circumstances, the period of delay is coincident with that of greatest need of ready funds.

Appendix E.

CLAIMS UNDER MASSACHUSETTS MOTOR VEHICLE INSURANCE LAW, PRESENTED BY ATTORNEY A, ADDRESS GIVEN AS STREET, BOSTON, REPORTED BY THE INSURANCE COMPANIES TO THE INSURANCE COMMISSIONER ON CARD FORMS IN STUDY OF CLAIMS FROM ACCIDENTS CAUSED BY CHELSEA, REVERE AND LYNN CARS.

1927.

List No.	Company No.	Claim No.	Assured's Name.	Injured Person.	Residence.	Injured Person's Doctor.	Date of Accident.	Town of Accident.	Amount Paid.	Was Suit Brought?	Was Judgment Rendered?
1	28	744775	A	1	Malden	Dr. Y3	12/29/27	Malden	$100 00	No	-
1	28	744775	A	1A	Malden	Dr. Y3	12/29/27	Malden	20 00	No	-
1	52	41602698	B	2	Revere	Dr. Y11	9/15/27	Chelsea	450 00	No	-
1	55	1444824	C	3 (32 yrs.)	Revere	Dr. Y3	11/6/27	Chelsea	100 00	No	-
1	55	1444824	C	3A (10 yrs.)	Revere	Dr. Y3	11/6/27	Chelsea	50 00	No	-
1	72	329087	D	4	Revere	Dr. X4	8/10/27	Chelsea	300 00	Yes	Yes
1	72	329087	D	4A	Revere	Dr. X4	8/10/27	Chelsea	215 00	Yes	Yes
1	96	3598	E	5	Chelsea	Dr. Y14	9/4/27	Revere	75 00	No	-

CLAIMS UNDER MASSACHUSETTS MOTOR VEHICLE INSURANCE LAW, ETC. — *Continued.*

List No.	Company No.	Claim No.	Assured's Name.	Injured Person.	Residence.	Injured Person's Doctor.	Date of Accident.	Town of Accident.	Amount Paid.	Was Suit Brought?	Was Judgment Rendered?
1	9	11-53482	F	6	Revere	Dr. Y2	1/14/27	Charlestown	$50 00	No	-
1	9	11-53472	F	7	Revere	Dr. Y2	1/14/27	Charlestown	75 00	No	-
1	9	11-53492	F	8	Revere	Dr. Y2	1/14/27	Charlestown	75 00	No	-
2	7	1037830	G	9	Revere	Dr. Y1	9/12/27	Revere	3,000 00	Yes	No
2	34	61102	H	10	Winthrop	Dr. Y15	7/9/27	Winthrop	260 00	Yes	Yes
2	43	76667	I	11	Revere	Dr. X4	8/1/27	Revere	425 00	No	-
2	55	1488409	J	12	Revere	Dr. Y8	12/7/27	Chelsea	100 00	No	-
2	60	3004664	K	13	Revere	Dr. X4	6/13/27	Chelsea	410 00	No	-
3	3	112452	L	14	Medford	Dr. Y16	9/3/27	Chelsea	75 00	No	-
3	3	112452	L	15	Medford	Dr. Y16	9/3/27	Chelsea	85 00	No	-
3	72	329328	M	16	Revere	Dr. Y1	9/18/27	Chelsea	250 00	No	-
3	72	329328	M	16A	Revere	Dr. Y1	9/18/27	Chelsea	200 00	No	-
3	72	329328	M	16B	Revere	Dr. Y1	9/18/27	Chelsea	200 00	No	-
7	3	106570	N	17	Revere	Dr. Y4	10/10/27	Chelsea	75 00	No	-
7	3	106570	N	17A	Revere	Dr. Y4	10/10/27	Chelsea	50 00	No	-
7	3	106570	N	18	Revere	Dr. Y4	10/10/27	Chelsea	25 00	No	-
7	7	1036486	O	19	Revere	Dr. Y1	7/10/27	Revere	235 00	Yes	No
7	7	1038321	P	20	Revere	Dr. Y1	10/2/27	Revere	218 00	No	-

7	7	1038320	P	1	Revere	Dr. Y1	10/2/27	Revere	218 00	No	-
7	7	1036485	Q	22	Revere	Dr. Y1	7/10/27	Revere	235 00	Yes	No
7	7	1038319	P	20A	Revere	Dr. Y1	10/2/27	Revere	218 00	No	-
7	7	1035639	R	23	Revere	Dr. Y1	6/16/27	Revere	500 00	Yes	No
7	8	13447-1	S	24	Revere	Dr. Y4	4/9/27	Revere	810 00	Yes	No
7	43	74334	T	25	Revere	Dr. Y4	6/8/27	Revere	150 00	No	-
7	46	816054	U	26	Chelsea	Dr. Y1	10/9/27	Revere	150 00	No	-
7	46	101929	U	27	Everett	Dr. Y1	10/9/27	Revere	75 00	No	-
7	46	101928	U	28	Everett	Dr. Y1	10/9/27	Revere	75 00	No	-
7	46	101927	U	29	Chelsea	Dr. Y1	10/9/27	Revere	125 00	No	-
7	46	101925	U	26A	Chelsea	Dr. Y1	10/9/27	Revere	150 00	No	-
7	46	101926	U	28A	Chelsea	Dr. Y1	10/9/27	Revere	75 00	No	-
7	52	41602083	V	30	Revere	Dr. Y3	6/24/27	Revere	100 00	No	-
7	52	41602083	V	31	Revere	Dr. Y3	6/24/27	Revere	1 00	No	-
7	62	8005453	W	32	Revere	Dr. Y17	11/15/27	Revere	350 00	Yes	No
7	72	328276	X	33	Revere	Dr. Y1	3/15/27	Revere	250 00	No	-
7	72	329534	Y	34	Revere	Dr. Y1	11/15/27	Revere	1,250 00	Yes	Yes
7	94	2469	Z	35	Revere	Dr. Y2	5/27/27	Revere	225 00	No	-
8	7	1039144	Z1	36	Revere	Dr. Y2	11/5/27	Revere	85 00	No	-
8	7	1040500	Z1	37	Chelsea	Dr. Y2	11/5/27	Revere	85 00	No	-
8	7	1040499	Z1	38	Revere	Dr. Y2	11/5/27	Revere	85 00	No	-

CLAIMS UNDER MASSACHUSETTS MOTOR VEHICLE INSURANCE LAW, ETC. — *Continued.*

List No.	Company No.	Claim No.	Assured's Name.	Injured Person.	Residence.	Injured Person's Doctor.	Date of Accident.	Town of Accident.	Amount Paid.	Was Suit Brought?	Was Judgment Rendered?
8	10	25611988	Z2	39	Everett	Dr. Y4	11/15/27	East Boston	$50 00	No	-
8	34	737362	Z3	40	Revere	Dr. Y4	11/29/27	Revere	100 00	No	-
8	34	737372	Z3	40A	Revere	Dr. Y4	11/29/27	Revere	50 00	No	-
8	34	737382	Z3	40B	Revere	Dr. Y4	11/29/27	Revere	75 00	No	-
8	34	86072	Z4	41	East Boston	Dr. Y3	10/9/27	Revere	103 00	No	-
8	34	69622	Z5	42	Revere	Dr. Y18	7/21/27	Revere	175 00	No	-
8	41	91687	Z6	43	Revere	Dr. Y1	7/27/27	Revere	205 00	Yes	No
8	46	825529	Z7	44	Revere	Dr. Y1	5/26/27	Revere	125 00	No	-
8	46	102119	Z8	45	Revere	Dr. Y19	11/8/27	Revere	253 00	No	-
8	46	150101	Z7	46	Revere	Dr. Y20	12/29/27	Revere	150 00	No	-
8	46	151101	Z7	46A	Revere	Dr. Y20	12/29/27	Revere	75 00	No	-
8	46	244101	Z7	46B	Revere	Dr. Y20	12/29/27	Revere	75 00	No	-
8	52	41601789	Z8	47	Revere	Dr. X4	5/18/27	Revere	235 00	No	-
8	54	302866	Z9	48	Revere	Dr. Y1	11/14/27	Revere	170 00	Yes	No
8	54	302867	Z9	49	Revere	Dr. Y1	11/14/27	Revere	160 00	Yes	No
8	54	302849	Z9	50	Revere	Dr. Y1	11/14/27	Revere	170 00	Yes	No
8	54	302850	Z9	51	Revere	Dr. Y1	11/14/27	Revere	200 00	Yes	No
8	93	7959	Z10	52	Chelsea	Dr. Y1	7/18/27	Revere	125 00	No	-

8	93	7958	Z10	52A	Chelsea	Dr. Y1	7/18/27	Revere	125 00	No	-
8	93	7688	Z10	53A	Chelsea	Dr. Y1	7/18/27	Revere	125 00	No	-
8	94	2921	Z11	54	Revere	Dr. Y1	8/9/27	Revere	225 00	No	-
9	80	166191	Z12	55	Lynn	None	7/24/27	Revere	150 00	No	-
9	80	166190	Z12	55A	Lynn	Dr. Y2	7/24/27	Revere	150 00	No	-
9	80	157196	Z12	56	Revere	Dr. Y2	7/24/27	Revere	75 00	No	-
9	84	33613	Z13	57	Revere	Dr. Y8	7/5/27	Revere	125 00	No	-
9	84	33611	Z13	57A	Revere	Dr. Y8	7/5/27	Revere	140 00	No	-
9	84	33612	Z13	57B	Revere	Dr. Y8	7/5/27	Revere	200 00	No	-
9	84	35271	Z13	58	Revere	Dr. Y8	7/5/27	Revere	125 00	No	-
10	86	20351917	Z14	59	New York City	Dr. Y1	6/10/27	Revere	*	Yes	-
11	12	4270822	Z15	60 61	Revere	Unknown	5/29/27	Revere	*	Yes	-
11	47	262043	Z16	62	Revere	Dr. Y21	10/17/27	Revere	*	Yes	-
12	87	5846	Z17	63	Revere	Dr. X4	12/25/27	Revere	185 00	Yes	Yes
41	7	1036353	Z18	64	Lynn	Dr. Y5	7/14/27	Lynn	139 00	No	-
41	7	1035266	Z19	65	Revere	Dr. Y1	5/9/27	Revere	300 00	No	-
41	7	1036971	Z20	66	Lynn	Dr. Y5	7/14/27	Lynn	125 00	No	-
41	7	1036695	Z21	67	Revere	Dr. Y1	5/9/27	Revere	100 00	No	-
41	7	1035265	Z21	68	Revere	Dr. Y1	5/9/27	Revere	100 00	No	-
41	7	1036694	Z21	69	Revere	Dr. Y1	5/9/27	Revere	100 00	No	-
41	10	25611052	Z22	70	Malden	Dr. Y1	9/22/27	Lynn	25 00	No	-

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CLAIMS UNDER MASSACHUSETTS MOTOR VEHICLE INSURANCE LAW, ETC. — *Concluded.*

List No.	Company No.	Claim No.	Assured's Name.	Injured Person.	Residence.	Injured Person's Doctor.	Date of Accident.	Town of Accident.	Amount Paid.	Was Suit Brought?	Was Judgment Rendered?
41	10	25611052	Z22	70A	Malden	Dr. Y1	9/22/27	Lynn	$25 00	No	-
41	10	25611052	Z22	71	Malden	Dr. Y5	9/22/27	Lynn	475 00	No	-
41	10	25611052	Z22	70B	Malden	Dr. Y1	9/22/27	Lynn	200 00	No	-
41	27	689	Z23	72	Revere	Dr. Y8	7/29/27	Revere	375 00	No	-
41	28	742936	Z24	73	Revere	Dr. X4	7/2/27	Lynn	15 00	No	-
41	28	742936	Z24	73A	Revere	Dr. X4	7/2/27	Lynn	60 00	No	-
41	28	742936	Z24	73B	Revere	Dr. X4	7/2/27	Lynn	50 00	No	-
41	28	742936	Z24	73C	Revere	Dr. X4	7/2/27	Lynn	15 00	No	-
41	28	742936	Z24	73D	Revere	Dr. X4	7/2/27	Lynn	15 00	No	-
41	28	742936	Z24	73E	Revere	Dr. X4	7/2/27	Lynn	15 00	No	-
41	28	742936	Z24	73F	Revere	Dr. X4	7/2/27	Lynn	15 00	No	-
41	28	742936	Z24	74	Revere	Dr. X4	7/2/27	Lynn	15 00	No	-
41	83	329258	Z25	75 75A	Saugus	Dr. Y2	7/8/27	Lynn	350 00	No	-
41	83	329257	Z25	75B	Saugus	Dr. Y2	7/8/27	Lynn	75 00	No	-
41	83	329259	Z25	75C	Saugus	Dr. Y2	7/8/27	Lynn	75 00	No	-
42	3	139770	Z26	76	Revere	Dr. Y1	7/15/27	Revere	875 00	Yes	Settled

42	7	1036258	Z27	77	Lynn	Dr. Y22	5/20/27	Topsfield	125 00	No	-
42	7	1035128	Z27	78	Lynn	Dr. Y22	5/20/27	Topsfield	125 00	No	-
42	17	2405	Z28	79	Revere	Dr. Y11	9/1/27	Chelsea	200 00	Yes	By agreement
42	46	48101	Z29	80	Revere	Dr. Y4	12/19/27	Revere	135 00	No	-
42	54	302872	Z30	81	Revere	Dr. Y4	11/12/27	Revere	175 00	No	-
42	84	37936	Z31	82	Revere	Dr. Y4	11/20/27	Lynn	230 00	No	-
41	62	8004738	Z32	83	Revere	Dr. Y4	9/5/27	Revere	50 00	No	-
41	62	8004736	Z32	84	Revere	Dr. Y4	9/5/27	Revere	50 00	No	-
41	62	8004737	Z32	84A	Revere	Dr. Y4	9/5/27	Revere	50 00	No	-
44	3	29383	Z33	85	Lynn	Dr. Y23	8/3/27	Lynn	*	Yes	Suit pending
44	3	29382	Z33	85A	Lynn	Dr. Y23	8/3/27	Lynn	*	Yes	Suit pending

Total collected $21,130 00

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CLAIMS UNDER MASSACHUSETTS MOTOR VEHICLE INSURANCE LAW, PRESENTED BY ATTORNEY A, ADDRESS GIVEN AS STREET, BOSTON, REPORTED BY THE INSURANCE COMPANIES TO THE INSURANCE COMMISSIONER ON CARD FORMS IN STUDY OF CLAIMS FROM ACCIDENTS CAUSED BY CHELSEA, REVERE AND LYNN CARS.

1928.

List No.	Company No.	Claim No.	Assured's Name.	Injured Person.	Residence.	Injured Person's Doctor.	Date of Accident.	Town of Accident.	Amount Paid.	Was Suit Brought?	Was Judgment Rendered?
21	43	90032	A	1	Revere	Dr. Y1	8/9/28	Revere	$350 00	Yes	For plaintiff
21	43	90033	A	2	Swampscott	Dr. Y1	8/9/28	Revere	216 50	Yes	For plaintiff
21	72	330170	B	3	Chelsea	Dr. X4	2/4/28	Chelsea	135 00	No	-
21	72	330170	B	3A	Chelsea	Dr. X4	2/4/28	Chelsea	130 00	No	-
21	72	330170	B	4	Chelsea——	Dr. X4	2/4/28	Chelsea	42 00	No	-
22	28	745952	C	5	Revere	Dr. Y2	4/29/28	Chelsea	100 00	Yes	No
22	28	745952	C	6	Boston	Dr. Y2	4/29/28	Chelsea	50 00	Yes	No
22	28	745952	C	6A	Boston	Dr. Y2	4/29/28	Chelsea	50 00	Yes	No
22	28	745952	C	5A	Revere	Dr. Y2	4/29/28	Chelsea	100 00	Yes	No
22	63	749034	D	7	West Somerville	Dr. Y1	9/24/28	Revere	25 00	No	-
22	63	749034	D	7A	West Somerville	Dr. Y1	9/24/28	Revere	100 00	No	-
22	63	749034	D	7B	West Somerville	Dr. Y1	9/24/28	Revere	50 00	No	-
23	72	330382	D1	8	- -	Dr. Y3	3/9/28	Chelsea	150 00	No	-

24	47	270954	E	9	Revere	Dr. Y4	11/17/28	Newburyport Turnpike	*	Yes	No
24	47	270954	E	10	Revere	Dr. Y4	11/17/28	Newburyport Turnpike	*	Yes	No
24	47	270954	E	11	Revere	Dr. Y4	11/17/28	Newburyport Turnpike	*	Yes	No
24	61	7003860	F	12	Revere	Dr. Y1	4/12/28	Revere	No payment	No	Claim closed 4/26/29
25	48	511040	G	13	Lynn	Dr. Y5	7/7/28	Chelsea	*	No	-
25	48	511041	G	13A	Unknown	Dr. Y5	7/7/28	Chelsea	*	No	-
25	48	511042	G	14	Lynn	Dr. Y5	7/7/28	Chelsea	*	No	-
25	48	511043	G	15	Lynn	Dr. Y6	7/7/28	Chelsea	*	No	-
25	60	3007420	H	16	Revere	Dr. Y3	7/16/28	Revere	$70 00	No	-
27	17	14566	I	17	Lynn	Dr. Y1	7/9/28	Revere	250 00	Yes	Minor settlement
27	27	3101	J	18	Revere	Dr. Y6	7/27/28	Boston	75 00	No	-
27	52	41603-846	K	19	Revere	Dr. Y4	5/24/28	Revere	485 00	No	-
27	72	330182	L	20	Revere	Dr. Y1	2/7/28	Revere	100 00	No	-
27	72	330182	L	21	Revere	Dr. Y1	2/7/28	Revere	200 00	No	-
27	72	330182	L	22	Revere	Dr. Y1	2/7/28	Revere	150 00	No	-
27	72	330182	L	23	Revere	Dr. Y1	2/7/28	Revere	150 00	No	-
27	83	334174	M	24	Revere	Dr. Y1	4/16/28	Revere	75 00	No	-
27	83	338935	N	25	Dorchester	Dr. Y7	11/3/28	Revere	245 00	No	-
27	83	338936	N	26	Chelsea	Dr. Y7	11/3/28	Revere	245 00	No	-
27	83	339796	N	27	Chelsea	Dr. Y1	12/31/28	Revere	50 00	No	-
27	83	339796	N	28	Malden	Dr. Y1	12/31/28	Revere	50 00	No	-

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CLAIMS UNDER MASSACHUSETTS MOTOR VEHICLE INSURANCE LAW, ETC. — *Continued.*

List No.	Company No.	Claim No.	Assured's Name.	Injured Person.	Residence.	Injured Person's Doctor.	Date of Accident.	Town of Accident.	Amount Paid.	Was Suit Brought?	Was Judgment Rendered
28	3	172732	O	29	Lynn	Dr. Y5	10/4/28	Lynn	$100 00	No	-
28	3	172732	O	30	Lynn	Dr. Y5	10/4/28	Lynn	250 00	No	-
28	3	172732	O	30A	Lynn	Dr. Y5	10/4/28	Lynn	150 00	No	-
28	3	172732	O	30B	Lynn	Dr. Y5	10/4/28	Lynn	100 00	No	-
28	3	186673	P	31	Revere	Dr. Y4	5/30/28	Malden	35 00	No	-
28	3	186673	P	32	Revere	Dr. Y4	5/30/28	Malden	35 00	No	-
28	3	186673	P	33	Revere	Dr. Y4	5/30/28	Malden	35 00	No	-
28	8	18929	Q	34	Revere	Dr. Y2	6/4/28	Revere	100 00	No	-
28	12	4803737	R	35 36	Revere Revere	Dr. Y3 -	6/20/28 -	Revere -	200 00 50 00	Yes -	No -
28	12	4803029	S	37	Revere	Dr. Y4	3/23/28	Revere	100 00	No	-
28	43	84975	T	38	Revere	Dr. Y8	4/22/28	Revere	3,500 00	Yes	No
28	83	337594	U	39	Revere	Dr. Y3	7/15/28	Revere	75 00	No	-
28	83	337593	U	40	Revere	Dr. Y3	7/15/28	Revere	200 00	No	-
28	83	336310	U	40A	Revere	Dr. Y3	7/15/28	Revere	115 00	No	-
28	83	340619	V	41	Revere	Dr. Y1	12/20/28	Revere	125 00	No	-
28	83	340620	V	42	Revere	Dr. Y1	12/20/28	Revere	120 00	No	-
28	83	339627	V	43	Revere	Dr. Y1	12/20/28	Revere	175 00	No	-

28	84	40198	W	44	Revere	Dr. Y4	1/19/28	Revere	1,500 00	No	-
29	43	87597	X	45	Mattapan	Dr. Y2	7/8/28	Revere	250 00	No	-
29	43	124198	Y	46	Providence	Dr. Y1	8/11/28	Revere	95 00	Yes	No
29	43	124199	Y	47	Providence	Dr. Y1	8/11/28	Revere	95 00	Yes	No
29	43	124200	Y	48	Providence	Dr. Y1	8/11/28	Revere	95 00	Yes	No
29	43	124201	Y	49	Providence	Dr. Y1	8/11/28	Revere	95 00	Yes	No
29	43	124202	Y	50	Providence	Dr. Y1	8/11/28	Revere	25 00	Yes	No
29	43	89672	Y	46A	Providence	Dr. Y1	8/11/28	Revere	95 00	Yes	No
29	83	335823	V	51	Revere	Dr. Y1	4/15/28	Revere	50 00	No	-
29	83	825140	V	52	Revere	Dr. Y1	4/15/28	Revere	75 00	No	-
29	83	335822	V	52A	Revere	Dr. Y1	4/15/28	Revere	100 00	No	-
29	83	825677	Z	53	Revere	Dr. Y9	6/5/28	Revere	125 00	No	-
30	41	103984	Z1	54	Boston	Dr. Y1	11/13/28	Revere	169 70	Yes	No
30	41	103983	Z1	55	Revere	Dr. Y1	11/13/28	Revere	*	Yes	-
30	41	103115	Z1	56	Dorchester	Dr. Y1	11/13/28	Revere	217 60	Yes	Yes
30	83	339797	Z2	57	Revere	Dr. Y1	12/31/28	Revere	250 00	No	-
30	83	339795	Z2	58	Boston	Dr. Y1	12/31/28	Revere	225 00	No	-
30	83	339796	Z2	59	Chelsea	Dr. Y1	12/31/28	Revere	50 00	No	-
30	83	339794	Z2	60	Malden	Dr. Y1	12/31/28	Revere	50 00	No	-
31	31	8153	Z3	61	Revere	Dr. Y4	7/4/28	Revere	25 00	No	-
31	31	8151	Z3	62	Revere	Dr. Y4	7/4/28	Revere	25 00	No	-

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CLAIMS UNDER MASSACHUSETTS MOTOR VEHICLE INSURANCE LAW, ETC. — *Concluded.*

List No.	Company No.	Claim No.	Assured's Name.	Injured Person.	Residence.	Injured Person's Doctor.	Date of Accident.	Town of Accident.	Amount Paid.	Was Suit Brought?	Was Judgment Rendered?
31	31	8152	Z3	62A	Revere	Dr. Y4	7/4/28	Revere	$25 00	No	-
31	31	8443	Z3	62B	Revere	Dr. Y4	7/4/28	Revere	25 00	No	-
31	34	50243	Z4	63	Revere	Dr. Y3	4/16/28	Revere	-	Yes	No*
31	38	20004106	Z5	64	Winthrop	Dr. Y10	7/14/28	Revere	-	Yes	Pending*
31	38	20004105	Z5	64A	Winthrop	Dr. Y10	7/14/28	Revere	-	Yes	Pending*
31	87	26001	Z6	65	Revere	Dr. Y3	11/25/28	Revere	325 00	No	-
31	87	26001	Z6	66	Revere	Dr. Y8	11/25/28	Revere	250 00	No	-
31	87	26001	Z6	67	No record	No record	11/25/28	Revere	75 00	No	-
31	87	26001	Z6	68	Revere	Dr. Y3	11/25/28	Revere	175 00	No	-
31	87	26001	Z6	69	No record	No record	11/25/28	Revere	35 00	No	-
31	94	8453	Z7	70	Revere	None	9/3/28	Revere	-	No	Pending*
47	12	4803819	Z8	71	Revere	Dr. Y1	6/26/28	Revere	142 50	No	-
47	28	746181	Z9	72	Lynn	Dr. Y5	5/17/28	Lynn	160 00	No	-
47	83	826800	Z10	73	Lynn	Dr. Y5	9/20/28	Lynn	125 00	No	-
48	3	152573	Z11	74	Revere	Dr. Y8	1/4/28	Revere	125 00	No	-
48	3	170901	Z12	75	Revere	Dr. Y8	6/15/28	Revere	300 00	No	-
48	3	185337	Z13	76	Everett	Dr. Y4	5/27/28	Revere	850 00	Yes	No

48	60	3006885	Z14	77	Revere	Dr. Y3	4/22/28	Revere	None	No	-
49	38	20003465	Z15	78	Revere	Dr. Y1	6/1/28	Revere	$225 00	No	-
49	83	340173	Z16	79	Medford	Dr. Y4	11/3/28	Revere	100 00	No	-
49	83	340174	Z16	80	Medford	Dr. Y4	11/3/28	Revere	150 00	No	-
49	83	340607	Z16	81	Revere	Dr. Y11	11/3/28	Revere	200 00	No	-
49	83	338706	Z16	82	Revere	Dr. Y4	11/3/28	Revere	25 00	No	-
49	83	340587	Z16	83	Not given	Dr. Y4	11/3/28	Revere	75 00	No	-
50	38	20003893	Z17	84	Revere	Dr. X4	7/9/28	Revere	-	Yes	Pending*
50	38	20003219	Z18	85	Revere	Dr. Y4	3/8/28	Charlestown	-	Yes	Pending*
50	44	8028720	Z19	86	Malden	Dr. Y12	12/8/28	Saugus	-	Yes	Pending*
51	38	20003943	Z20	87	Lynn	Dr. Y13	4/11/28	Lynn	-	Yes	Pending*
51	38	20003946	Z20	87A	Lynn	Dr. Y13	4/11/28	Lynn	-	Yes	Pending*
51	38	20003945	Z20	87B	Lynn	Dr. Y13	4/11/28	Lynn	-	Yes	Pending*
51	38	20002932	Z20	87C	Lynn	Dr. Y13	4/11/28	Lynn	-	Yes	Pending*
51	38	20003942	Z20	87D	Lynn	Dr. Y13	4/11/28	Lynn	-	Yes	Pending*
51	38	20002595	Z21	88	Revere	Dr. Y8	2/29/28	Chelsea	-	Yes	Pending*
52	55	1794038	Z22	89, 90, 91	Revere	Dr. Y1	11/16/28	Revere	None*	Yes	No*
52	55	1573590	Z23	92	Salem	Dr. Y1	5/18/28	Lynn	$121 00	Yes	Yes

Total collected	$16,289 30
Total collected in 1927	21,130 00
Total for 1927 and 1928	$37,419 30

* A star appears if claim not settled when card forwarded to Insurance Department.

Appendix F.

SUMMARY OF MOTOR VEHICLE LIABILITY INSURANCE LAWS OF MASSACHUSETTS AND OTHER STATES.

Massachusetts.

Every applicant for registration (in the state) of a motor vehicle or trailer — with the exceptions hereinafter stated — is required to accompany his application to the Registrar of Motor Vehicles with a "certificate" of an authorized insurance or surety company, in form prescribed by Commissioner of Insurance, to the effect that a policy (or "binder") or a bond has been issued to such applicant, in form prescribed and running for a period coterminous with that of registration, covering liability for all bodily injuries (including death) sustained during such period, by persons other than employees or persons responsible for the operation of the vehicle, etc., arising out of the operation, by the registrant or any person with his express or implied consent, of such vehicle, etc., on the highways of the state, up to limits of at least $5,000 and $10,000 for any one accident, or in lieu of such a certificate, with a deposit of $5,000 in cash or securities (chapter 90, sections 1, 1A, 34A–34J). A manufacturer or dealer may cover all motor vehicles owned or controlled by him by one bond or policy (chapter 90, section 34C).

Not subject to the foregoing provisions are motor vehicles, etc., owned by the state, any subdivision thereof, a common carrier, a corporation subject to supervision by the Department of Public Utilities, or a street railway company under public regulation (chapter 90, section 1A).

Certificates and motor vehicle liability policies and bonds are defined (chapter 90, section 34A). Certificates must be in a form prescribed by the Commissioner of Insurance and contain certain statements prescribed (chapter 90, section 34B). Motor vehicle liability policies (including "binders") and bonds must be in a form approved by such Commissioner and contain, in substance, certain provisions prescribed. No can-

cellation of such a policy or bond shall be valid unless written notice is given to the Registrar at least fifteen days prior to the date of cancellation (chapter 175, section 113A). Upon receipt of notice of cancellation, or if company issuing policy or bond ceases to be authorized to do business, the Registrar must notify registrant to file new security, and in default thereof, except in case of appeal to the Board of Appeal, shall immediately revoke the registration (chapter 90, section 34H).

Fair and reasonable classifications, and adequate, just, reasonable and non-discriminatory rates for policies and bonds, are to be fixed annually, on or before September 15, by the Commissioner of Insurance, after due hearing and investigation, for the ensuing calendar year or any part thereof. Notice of such hearing and of proposed rates is to be published as prescribed. Decisions of the Commissioner are subject to review by the Supreme Court. The Commissioner may at any time require any company to file with him such data, statistics, schedules or information as he may deem necessary (chapter 175, section 113B).

Any person aggrieved by the cancellation of a motor vehicle liability policy or bond, or by the refusal of any company to issue to him such a policy or bond, may complain to the Commissioner of Insurance, who shall notify the Board of Appeal, which is empowered, after hearing and subject to review by the courts, to decide whether such cancellation or refusal is proper and reasonable. For failure to comply with decision of such Board, a company's license may be revoked or suspended, or it may be enjoined from doing business until compliance (chapter 26, section 8A; chapter 175, section 113D).

Special provisions govern the custody, disposition, etc., of deposits of cash or securities, and of income thereon (chapter 90, sections 34D–34E). When an action, the payment of a judgment wherein is secured by a deposit of cash or securities with the department, is begun, the depositor must immediately, under penalty, notify the Registrar and the department, who thereupon may require an additional deposit or a bond or policy (chapter 90, section 34F). There are special provisions for the enforcement of judgments against such deposits of cash or securities and against motor vehicle liability bonds (chapter 90, sections 34D, 34E, 34G).

The Registrar must furnish a copy of his record of each registration to the company appearing as signatory to the certificate accompanying the application (chapter 90, section

34B); and must furnish any person upon request the name of the company issuing the bond or policy covering any particular motor vehicle or registrant (chapter 90, section 34I). The Commissioner of Insurance must forthwith notify the Registrar of Motor Vehicles of the names of companies as they become or cease to be authorized to issue motor vehicle liability policies or bonds (chapter 175, section 113C).

Penalties are provided for issuing a certificate in a form not approved by the Commissioner of Insurance, or forging or altering a certificate or issuing a certificate without authority, etc. (chapter 90, section 34B), or operating or permitting to be operated a motor vehicle or trailer while a policy, bond or deposit is not provided and maintained as required by the act (chapter 90, section 34J). A company issuing a certificate through an authorized officer or agent is estopped from denying the policy or bond (chapter 90, section 34B). Rate cutting, rebating or discrimination in furnishing or obtaining motor vehicle policies or bonds, or charging any rate different from that fixed under this law, is forbidden (chapter 175, sections 182, 183).

Actions of tort for bodily injuries or death, the payment of judgments wherein is required to be secured by this act, and suits or motor vehicle liability bonds under this act, must be commenced within one year after cause of action accrues (chapter 260, section 4).

For provisions relative to licensing common carriers, etc., see chapter 159, section 46, and chapter 221, section 47; and for provisions relative to damages for wrongful injuries resulting in death, see chapter 229, section 5.

California.

Where a judgment for personal injury or for damage to property in excess of $100, rendered against any person, by a court of competent jurisdiction, has become final, such person's operator's or chauffeur's license and all his motor vehicle registration certificates shall be suspended upon receipt of a certified copy of such judgment, and shall remain suspended, nor shall any other motor vehicle thereafter be registered in his name while any such judgment against such person remains unsatisfied and not until such person gives proof of his ability to respond in damages for future accidents. But for the purposes of these provisions, credit of $5,000 on a judgment for injury to

one person, $10,000 on a judgment for injuries to two or more persons in any one accident, or $1,000 on a judgment for property damage, shall be deemed a satisfaction of such judgment. If a non-resident fails to give proof of ability, his privilege to operate or to have any motor vehicle owned by him operated within the state shall be withdrawn.

Proof of ability to respond in damages, as above required, shall mean proof of ability to respond in damages up to $5,000 for injury to one person, $10,000 for injuries to two or more persons in any one accident, and $1,000 for property damage. It may be given either (1) by the certificate or certificates of an authorized insurance company that it has issued to the person specified a motor vehicle liability policy or policies conforming to the provisions of this act; or (2) a bond of an authorized surety company or a bond with individual sureties, each owning unencumbered real estate, approved by a judge of a court of record; or (3) evidence of deposit with the State Treasurer of $11,000 in money. The certificate or certificates of insurance must cover all motor vehicles registered in the name of the person furnishing proof, and must certify that the insurance shall not be cancelled except upon ten days' prior written notice.

A motor vehicle liability policy, to be accepted under the preceding provisions, must, in the alternative, either designate the motor vehicle or vehicles to be covered, and insure the person therein named, or any other person using any such vehicle with his consent, against liability resulting from the operation of any such vehicle, or insure the person named therein against liability resulting from the operation by him of any motor vehicle, except a vehicle registered in his name. Every such policy must cover liability up to at least the amounts specified. But the policy may provide any lawful coverage in excess of or in addition to the coverage so required, and may contain any other provisions not contrary to the provisions of this act nor otherwise contrary to law.

Penalties are provided for failure to register a motor vehicle, etc., and for driving a motor vehicle, etc., while license is suspended or revoked.

(General Laws of California (1923), Title 379, sections 36½, 36¾, 51, 66, 72, 73 and 74, as amended by chapter 239, Laws of 1925, chapter 752, Laws of 1927, and by chapters 258, 259 and 262, Laws of 1929.)

CONNECTICUT.

The Commissioner of Motor Vehicles is empowered to require from any person convicted of, or who evades or avoids prosecution for, a violation of any of certain specified provisions of the Motor Vehicle Law or similar provisions of the laws of any other state (*i.e.*, provisions relative to special licenses for public service operators, failure to obey officer, reckless driving, driving while intoxicated, operating vehicle without owner's permission, racing or evading responsibility, leaving vehicle in a dangerous condition, failure to stop on approaching railway car taking on or discharging passengers, defective brakes, false testimony, and wrongful use of number plates or registrations), or who is concerned in, and, in the opinion of the Commissioner, is wholly or partly responsible for, any motor vehicle accident causing injury to (including death of) any person or damage to property of at least $50, or from the person in whose name the vehicle is registered, or from both of such persons, proof of financial responsibility to satisfy any claim for injuries to person or damages to property up to limits of not less than $5,000 and $10,000 and $1,000. Where such proof is required of any person, the Commissioner may require like proof for each motor vehicle owned or registered by such person.

Such proof may consist of (*a*) a certificate of public liability insurance in an authorized company, covering injuries to persons and damage to property to limits above mentioned; (*b*) a surety bond; or (*c*) a deposit of money or collateral. Such an insurance, etc., must be satisfactory to the Commissioner, and the policy of insurance must be non-cancellable except after ten days' notice to him. The Commissioner may at any time require additional proof of responsibility.

The Commissioner may cancel or return the bond, certificate of insurance or deposit three years after it is furnished, if in the meantime the person required to furnish it shall not have violated any provision of the motor vehicle laws, provided no right of action or judgment arising out of the operation of a motor vehicle is then outstanding against him.

For failure to furnish such proof when required the Commissioner may suspend or revoke the license of the person in default, or suspend or revoke the registration of the motor vehicle involved, or refuse registration to any motor vehicle

owned by such person, or, in case of a non-resident, withdraw his privilege of operating a motor vehicle, or to have operated any motor vehicle owned by him, in the state, etc.

Upon request, the Commissioner must furnish insurance companies, etc., the operating records of any person subject to the act, and must furnish injured persons information of proof of responsibility furnished him.

Penalties are provided for forging proof of financial responsibility, failure to return number plates, etc., and the Commissioner is empowered to make rules and regulations necessary to carry out the provisions of the act.

The Commissioner shall classify all persons from whom proof of responsibility is required in three classes, to be known as Classes A, B and C, according to the seriousness of their offences; and no certificate of insurance or bond of a surety company shall be accepted as proof of financial responsibility unless the company (individually or through a rating organization) shall have filed with the Commissioner its schedules of standard rates, and unless such certificate or bond shall show that the premium charged therefor was in excess of the standard rate, — 10 per cent for a person in Class A, 25 per cent for a person in Class B, and 50 per cent for a person in Class C. Penalty is provided for a false certificate of the premium charged.

When a person classified in one of the classes above mentioned shall have committed no offence and been involved in no accident during the preceding twelve months, upon his application the Commissioner shall reclassify him in the next better class, or, if he be in Class A, eliminate him from classification. A person already classified may, for a further offence, be reclassified in a worse class. Provision is made for a rehearing upon the application of any person aggrieved by his classification, etc.

Upon complaint that a judgment for a sum other than costs or nominal damages in an action arising out of the operation of a motor vehicle has remained unpaid for more than sixty days, without notice of appeal, the Commissioner shall suspend the operator's license of the defeated party, and may suspend the registration of any motor vehicle owned by him, until proof that such judgment has been satisfied.

The law forbids registration of any motor vehicle owned by a person under sixteen years of age, or by a minor between sixteen

and twenty-one unless proof of financial responsibility, in accordance with the law, be filed, along with the written approval of one or both parents or the guardian of such minor.

It also forbids any minor between sixteen and eighteen to operate any motor vehicle on the highway, and forbids any person to cause or permit such a minor to so operate any motor vehicle unless the owner of such vehicle has filed proof of financial responsibility, as required by the law, of persons subject thereto.

(Chapter 161, Acts of 1927, repealing (and, in effect, reenacting with amendments) chapter 183, Acts of 1925, as amended and supplemented by chapters 297 and 300, Acts of 1929, and chapter 276, Acts of 1927.)

Iowa.

The law provides that when any final judgment is recovered in a court of record in the state for injury to person or damages to property arising out of the operation or ownership of a motor vehicle, a transcript thereof may be duly filed with the county treasurer, who thereupon shall suspend the license of the judgment debtor and the registration of all motor vehicles registered in his name; and thereafter no license shall be issued to, nor motor vehicle registered in, the name of such judgment debtor until proof is filed that such judgment has been stayed, satisfied or otherwise discharged of record; but payment of $5,000 on judgment for injury to one person, of $10,000 on judgment for injuries to two or more persons, or of $1,000 on judgment for property damage, shall be deemed a satisfaction of such judgment.

No judgment shall be deemed final while stayed on appeal. Where registration has been suspended and the judgment has been satisfied or otherwise stayed, the registration shall be reinstated.

(Chapter 118, Laws of 1929.)

Maine.

The law provides that the Secretary of State shall require from any person who is convicted of operating a motor vehicle recklessly or while under the influence of intoxicating liquor, or of not stopping after an accident, or from the registered owner of such vehicle, or from both of such persons, such proof of finan-

cial responsibility to satisfy any claim for personal injury up to $5,000, or property damage up to $1,000, as shall satisfy the Secretary, which may be in the form of an insurance policy, bond, cash, securities, etc.

The Secretary may cancel or return the bond, policy or security three years after its deposit, if in the meantime the person who deposited it shall not have violated any provision of the motor vehicle laws, provided that no right of action or judgment arising out of the operation of a motor vehicle is then outstanding against him.

For non-compliance with such requirement the Secretary may suspend the registration of the motor vehicle or refuse registration to any vehicle owned by the person in default, or, if such person is a non-resident, withdraw his privilege to operate a motor vehicle, or to have operated any motor vehicle owned by him, in the state, etc.

Upon receipt of record of judgment of any court in the state rendered against any person, firm or corporation by reason of a motor vehicle accident (subsequent to effective date of amendments of 1929), with proof that such judgment has not been satisfied, the Secretary shall suspend the license of such person, etc., or the registration of the vehicle, or both, until such judgment is satisfied in full; and until the judgment is so satisfied such person, etc., shall be ineligible for a license to operate.

Upon request, the Secretary must furnish insurance companies, etc., with the operating records of any person subject to the act.

(Chapter 210, Laws of 1927, as amended by chapter 209, Laws of 1929.)

Minnesota.

The law regulates the use of the highways, among other things, providing that, upon conviction of any person of driving recklessly or while under the influence of liquor or narcotics, the court may make an order forbidding such person to drive a motor vehicle on any highway in the state for such period not exceeding two years as the court shall fix, unless such person shall execute and file with the Registrar of Motor Vehicles an indemnity bond in the amount of $2,500, conditioned that he will pay all damages any person may sustain in consequence of any negligence or unlawful act committed by him in oper-

ating a motor vehicle upon any such highway during the period so fixed.

(Chapter 412, Laws of 1927.)

New Hampshire.

The law provides that upon petition in an action at law to recover damages for injury to person or property resulting from an automobile accident the court shall make a preliminary inquiry; and if, upon such inquiry, it is found that the accident was probably due to the negligence of the defendant, without contributory negligence by the plaintiff, the court shall order the defendant to furnish such security as the court may deem proper to satisfy the final judgment in such action, not, however, to exceed $5,000 for bodily injuries or death, or $1,000 for property damage.

For failure to comply with such order the Commissioner of Motor Vehicles shall suspend the defendant's license and the registration of any motor vehicle or trailer owned by him, and, if the motor vehicle involved was being operated by or with the consent of the owner, shall similarly suspend the owner's license and the registration of all motor vehicles and trailers owned by him, or, if there is no license or registration in the state to suspend, the court shall enter an order prohibiting the defendant (or defendant and owner) to operate, or to have operated any motor vehicle owned by him, in the state. Any such revocation, suspension, prohibition, etc., shall continue until security is filed.

A certificate of an authorized insurance or surety company that it has issued to or for the benefit of the defendant a policy or bond, in form prescribed, with limits of at least $5,000 and $10,000 and $1,000 for any one accident, covering the motor vehicle or trailer involved in the accident, shall be accepted as sufficient security. If the defendant files or has already filed such a certificate, the petition for a preliminary hearing shall be dismissed.

Findings of the court upon the preliminary hearing, etc., are inadmissible in evidence upon the trial of the action for damages.

In lieu of or in addition to the proceedings provided for in the act of 1927, the Motor Vehicle Commissioner, upon the application of a person injured, etc., in an automobile accident in which the motor vehicle of another person is involved, shall, or,

upon his own motion, may, investigate to determine whether the owner or operator of such vehicle is probably liable for and financially responsible to the amount of damages suffered, up to $5,000 for injury to one person, $10,000 for injuries to more than one person, or $1,000 for property damage.

If, upon such investigation, the Commissioner is not satisfied as to the financial responsibility of the party or parties he finds may be liable, he shall require such party or parties to file with him a certificate of insurance or bond as required by the act of 1927; but a certificate of a surety company so filed must cover the motor vehicle involved as to any action for damages not yet instituted.

If a person fails to comply with these provisions, the Commissioner shall suspend his operator's license and the registration of all motor vehicles owned by him; or, if such person has no license in the state, the Commissioner shall enter an order prohibiting him from further operating motor vehicles, or having any motor vehicle owned by him operated, in the state. A license or registration so suspended may be renewed by the Commissioner at such time and upon such conditions as he may deem will adequately protect the public.

(Chapter 54, Laws of 1927; chapter 189, Laws of 1929.)

New Jersey.

Whenever any person has been convicted of, or forfeited bail or paid money to avoid prosecution for, violation of certain provisions of the motor vehicle laws (relative to reckless driving, speeding, operating while intoxicated, going away without stopping after an accident, etc.), or has caused injury to person or damage to property to the extent of at least $100 while operating any motor vehicle, the Commissioner of Motor Vehicles shall require from such operator, or from the person in whose name such motor vehicle was registered, or from both, proof of financial responsibility to satisfy any claim for damages for at least $5,000 for injury to one person, $10,000 for injuries to two or more persons in any one accident, and $1,000 for property damage. Where such proof is required of any person, it must be in said amounts for each vehicle owned or registered by such person. If the person of whom proof is so required fails to comply, the Commissioner shall suspend or revoke such person's license and the registration of any motor vehicle or vehicles registered in his name, which shall remain revoked or

suspended until compliance; and, while such proof is not furnished, the Commissioner shall refuse to register any motor vehicle owned by such person or transferred by him without satisfactory evidence of bona fide sale; or, if such person is a non-resident of the state, the Commissioner shall withdraw such person's privilege of operating any motor vehicle, or having operated any motor vehicle owned by him, within the state until he complies with these provisions. No appeal from a judgment of conviction, etc., shall stay such action by the Commissioner.

The Commissioner may likewise suspend or revoke the license or registration of any person whose license or registration has been revoked or suspended in any other state of the United States, unless proof of financial responsibility is furnished.

Proof of financial responsibility shall be such as is satisfactory to the Commissioner of Motor Vehicles, and may be either (1) a certificate of public liability and property damage insurance, in the amounts above specified; (2) a bond of a surety company or of an individual surety owning real estate, in said amounts; (3) a deposit with the Commissioner of money or collateral in amount satisfactory to him. Additional evidence of financial responsibility may be required by the Commissioner at any time. A policy of insurance so certified and a bond so furnished shall not be cancellable except after ten days' notice to the Commissioner.

The agent of an insurance company who certifies to insurance under this act must notify the Commissioner of the expiration of the policy at least ten days before the effective date of such expiration, and must promptly notify the Commissioner of any renewal thereof.

A certificate of insurance, bond or deposit, furnished pursuant to these provisions, may be cancelled or returned to the person who furnished it after three years have elapsed since it was furnished, if, during the intervening period, such person has not violated any provision of the laws above specified, and if no right of action or judgment arising out of the operation of a motor vehicle shall then be outstanding against him.

A policy of insurance, to be accepted under this act, must be in a form approved by the Commissioner of Insurance, must disclose the name, address and business of the insured, the coverage afforded, the premium charged, the policy period and the limit of liability, and must contain an agreement that

the insurance provided is in accordance with the coverage required by the act and subject to all the provisions of the act. The policy must, in the alternative, either designate the motor vehicle or vehicles to be covered, and insure the person named therein, and any other person using any such vehicle with his consent, against liability resulting from the operation of any such vehicle, or insure the person named therein against liability resulting from the operation by him of any motor vehicle registered in his name.

A person whose license or registration is suspended, etc., must immediately return to the Commissioner his license or certificate of registration and number plates.

The Commissioner of Motor Vehicles must furnish to any person injured in person or property, upon written request, such information as has been furnished to him as evidence of the financial responsibility of any motor vehicle operator or owner. And for the sum of $1 he must, upon request, furnish any insurance company, surety, etc., a certified abstract of the operating record of any person subject to the act.

(Chapter 116, Laws of 1929.)

New York.

The law is modeled after the "Safety-Responsibility Bill" formulated by a committee of the American Automobile Association. It amends the "Vehicle and Traffic Law" to provide:

Where any person has been convicted of, or pleaded guilty to or forfeited bail given for, violation of any of the provisions of law relative to reckless driving or speeding (if injury to person or property actually results therefrom), unlicensed operating or driving, driving while intoxicated, or going away without stopping after an accident, or for an offence in any other state, which, if committed in this state, would be a violation of any of said provisions of law, such person's operator's or chauffeur's license and all his motor vehicle registration certificates shall be suspended by the Commissioner of Motor Vehicles, and shall remain suspended until he shall furnish proof of his ability to respond thereafter in damages to at least $5,000 for injury to one person, $10,000 for injuries to two or more persons in any one accident, and $1,000 for property damage. But where the person so convicted, etc., was a chauffeur or operator in the employ of the owner of the motor vehicle involved, he shall be relieved from furnishing such proof if such owner furnishes it.

Where a judgment for personal injury or for damage to property in excess of $100, in an action resulting from the ownership or operation of a motor vehicle, has been rendered against any person by a court of competent jurisdiction in the state, and has become final and remains unsatisfied for fifteen days thereafter, such person's operator's or chauffeur's license and all his motor vehicle registration certificates shall be suspended by the Motor Vehicle Commissioner upon receipt of a certified copy of such judgment, etc., and shall remain suspended, nor shall any other motor vehicle thereafter be registered in his name, so long as there is any such judgment against such person unsatisfied (otherwise than by discharge in bankruptcy), and until such person shall furnish proof of his ability to respond in damages up to the limits specified in the preceding paragraph; but, for the purposes of this act, credit of $5,000 on a judgment for injury to one person, $10,000 on a judgment for injuries to two or more persons in any one accident, or $1,000 on a judgment for property damage, shall be deemed a satisfaction of such judgment.

The court or clerk of the court in which a judgment has been rendered must forward a certified copy or transcript thereof to the Commissioner of Motor Vehicles; and, if the person against whom such judgment is rendered is a non-resident of the state, such Commissioner must transmit a certified copy, etc., of such judgment to the motor vehicle authorities of the state of which such person is a resident. If a non-resident of the state is affected by the provisions of this act, and fails to comply therewith, his privilege to operate or to have any motor vehicle owned by him operated within the state shall be withdrawn.

Proof of ability to respond in damages as above required may be furnished (1) by filing with the Commissioner of Motor Vehicles either a certificate of an authorized insurance company that it has issued to the person specified a motor vehicle liability policy, conforming to the provisions of the act; or (2) a bond of an authorized surety company, or a bond with individual sureties, each owning real estate, approved by a judge of a court of record; or (3) by a deposit with the Department of Taxation and Finance of money or collateral. Such policy, bond or deposit must cover all motor vehicles then registered in the name of the person furnishing the same, and up to the amounts above specified. Additional insurance must be furnished upon the registration of additional motor vehicles. And at any time the Commissioner may require additional security. A motor

vehicle liability policy certified under these provisions may be terminated only by notice to the Motor Vehicle Commissioner at least ten days before the effective date of expiration or cancellation.

A certificate of insurance, bond or deposit, furnished pursuant to these provisions, may be cancelled or returned to the person who furnished it after three years have elapsed since the date when furnished, if, during the intervening period, such person has not violated any of the provisions of the motor vehicle laws, and if no suit or judgment for damages resulting from the operation of a motor vehicle is then pending or outstanding against him.

A motor vehicle liability policy, to be accepted under this act, must be in form approved by the Superintendent of Insurance, must disclose the name, address and business of the insured, the coverage intended to be granted, the premium charge, the policy period and the limits of liability, and must contain an agreement that the insurance shall be in accordance with the coverage required by the act and subject to all the provisions of the act. The policy must, in the alternative, either designate the motor vehicle or vehicles to be covered, and insure the person therein named, and any other person using any such vehicle with his consent, against liability resulting from the operation of any such vehicle, or insure the person named therein against liability resulting from the operation by him of any motor vehicle, except a motor vehicle registered in his name. But the policy may grant any lawful coverage in excess of or in addition to the limits required by the act, and may provide that the insured, etc., shall reimburse the company for payments for loss due to a breach of the terms of the policy.

The Commissioner of Motor Vehicles must furnish to any person injured in person or property, upon written request, all information of record in his office pertaining to the evidence of ability of any motor vehicle operator or owner to respond in damages. And for the sum of $1 he must, upon request, furnish any insurer, person or surety a certified abstract of the operating record of any person subject to the provisions of the act.

A person whose license or registration is suspended, or whose insurance or bond shall be cancelled or terminated, etc., must forthwith surrender his license and/or certificates of registration and number plates.

Penalties are provided for forging evidence of ability to respond in damages.

(Chapter 695, Laws of 1929.)

North Dakota.

Whenever any person is convicted of reckless driving on a public highway, of driving a motor vehicle on a public highway while under the influence of intoxicating liquor or a narcotic drug, or of failure to stop in event of accident involving injury to or death of a person, he must file with the Registrar of Motor Vehicles, before again driving a motor vehicle, a personal or surety bond, for $2,000, to secure the payment of any and all lawful claims against him for injury to person or damage to property arising out of negligent driving of a motor vehicle within two years after such conviction.

All justices of the peace, police magistrates and judges are required to report to the Registrar of Motor Vehicles convictions for the offences mentioned.

(Chapter 163, Laws of 1929.)

Rhode Island.

The law provides that whenever a motor vehicle is involved in an accident on the public highways, causing bodily injuries or damage to property amounting to $100 or more, the operator shall report the accident to the State Board of Public Roads, in such detail as it may require, which Board may make an investigation, and, if it appears that the operator of any motor vehicle involved violated any of the provisions of sections 16 and 17 of chapter 98 of the General Laws (relative to rules of the road, reckless driving, speeding, driving while intoxicated, going away without stopping after an accident, driving an unregistered vehicle, etc.), the Board shall require evidence of financial responsibility of the operator or owner of such vehicle, or of both.

Whenever any operator of a motor vehicle is convicted or pleads guilty, in any court of the United States, to a charge of operating a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or after revocation, suspension or refusal of license, or of going away without stopping after an accident, the Board shall require evidence of financial responsibility from such operator, and may also require it from the owner of the vehicle.

If the operator or owner affected is a non-resident of the state, the Board shall suspend the right or permit of such operator or owner, or of both, to operate or have operated a motor vehicle in the state until such operator or owner complies with the provisions of this act.

When evidence of financial responsibility is so required of an owner, it shall be required for each and every motor vehicle registered by him, and when required of an operator shall cover any motor vehicle operated by him. Such evidence of financial responsibility shall consist of either (1) a certificate of insurance in a company authorized to do business in the state against liability for injury to person and damage to property (with limits of not less than $5,000 and $10,000 and $1,000); (2) a certificate that there has been filed with the State Treasurer a bond of an authorized surety company in the amount of $11,000, conditioned for the payment of any claim for any final judgment for damages up to the amounts mentioned; or (3) a statement, under the oath of such owner or operator, setting forth an accounting of all his assets and liabilities and showing conclusively his ability to meet claims up to $20,000.

For failure to comply with the provisions of the act, the Board shall suspend the license or registration of the operator and/or owner, and no such license or registration shall be reissued or reinstated, and no new license or registration granted, until the provisions of the act are complied with or until ordered by the Board. In the case of suspension, the license and/or certificate of registration and number plates must be surrendered or their loss or destruction accounted for.

No motor vehicle owned by a person under sixteen years of age shall be registered. No motor vehicle owned by a person between sixteen and twenty-one years of age shall be registered unless evidence of responsibility is furnished, together with a written request or approval of a parent or guardian.

Penalties are provided for false certificates of insurance. And it is provided that no terms of a policy of insurance, etc., shall operate to avoid it as against a judgment creditor of the principal.

Every decision or order of the Board is subject to review by the courts, upon appeal by any person aggrieved.

The operator of a motor vehicle with the consent, express or implied, of the owner, lessee or bailee thereof, is in case of accident to be deemed to be the agent of such owner, lessee or bailee, unless such operator has furnished evidence of financial

responsibility; and the term "owner" is to include any person, firm, etc., having the lawful possession and control of a motor vehicle under a written sale agreement.

The Board is given power to examine motor vehicles on the highways; and for such purposes may call on state and local police for assistance.

Motor vehicles owned by any person, firm, etc., required to give bond or other security under chapter 254 of the General Laws, or by the United States, any state department, city or town, or representative of a foreign government, and hospital ambulances and apparatus belonging to volunteer fire companies, are exempted from the application of this act.

(Chapter 1429, Laws of 1929.)

VERMONT.

The law provides that the Commissioner of Motor Vehicles shall require proof of financial responsibility to satisfy any claim for damages up to $5,000 for injury to one person, $10,000 for injuries to two or more persons, and $1,000 for property damage in any one accident:

(*a*) From the owner and operator of any motor vehicle when the operator, as the result of such accident, is convicted of a violation of any one of certain provisions of the Motor Vehicle Act (relating to meeting while moving in opposite directions, right of way, intersecting highways, overtaking vehicle going in same direction, passing other vehicle when view is obstructed, rounding curves, speeding and stopping after accident), but from such owner only in case the vehicle was being operated by himself, a member of his family, an agent or servant.

(*b*) From any person convicted of violation of any one of certain other provisions of the Motor Vehicle Act (relating to operating motor vehicle under influence of intoxicating liquor or drugs, or without consent of owner, or after suspension, revocation or refusal of license).

(*c*) From the owner and operator of any motor vehicle involved in an accident causing injury to person or damage of $75 or more to property, if the Commissioner determines that the operator was at fault, but from such owner only in case the vehicle was being operated by himself, a member of his family, an agent or servant.

(*d*) From any person against whom there is an unsatisfied

judgment in a court of competent jurisdiction in the state arising out of a motor vehicle accident and based upon a violation of any of the provisions of the Motor Vehicle Act.

Proof of financial responsibility when so required of a person must cover all motor vehicles owned by him, and must be satisfactory to the Commissioner. It may be evidence of liability and property damage insurance, in the amounts above specified, in an authorized insurance company; or it may be the bond, in said amounts, of an authorized surety company. But the policy of insurance must be non-cancellable, except after ten days' notice to the Commissioner; and the policy or bond must waive, as against injured persons, all defences based upon false representations by the assured, and must be for the benefit of the persons injured, to satisfy the liability of the insured to the amounts specified. The Commissioner may at any time require additional evidence of responsibility.

For failure of any person to furnish such proof within twenty days after notice by mail, the Commissioner shall suspend his license and the registration of any and all motor vehicles registered in his name, or refuse thereafter to register any motor vehicle owned by him or subject to his control or transferred by him in bad faith, or, if such person is a non-resident, suspend his right to operate or cause to be operated in the state any motor vehicle owned or controlled by him.

After proof of financial responsibility has been so required of a person, he shall not be entitled to renew his license or again register any motor vehicle, unless such proof, or a renewal thereof, is kept on file and in force, except that the Commission may relieve a registrant from further continuing the bond or policy after three years, if during the intervening period he is not convicted of any violation of the motor vehicle laws and has not suffered any suspension or revocation of license, and if no suit or judgment arising out of the operation of any motor vehicle is then outstanding against him.

A person whose registration is suspended must immediately return his certificate of registration and number plates to the Commission, subject to penalty for non-compliance.

Upon request, for a fee of $1, the Commissioner must furnish any insurance or bonding company with the operating record of any person subject to the act.

No license shall be issued to a person against whom there is outstanding, unsatisfied, any judgment such as above specified.

(Act No. 81, Acts of 1927, as amended by Act No. 77, Acts of 1929, and amended and supplemented by Act No. 76, Acts of 1929.)

WISCONSIN.

The law provides that when a judgment of any court has been entered against a "licensee" (*i.e.* a person holding an automobile driver's license), on account of negligence in operating an automobile, such license shall be revoked; but such revocation may be stayed, as provided, pending final determination of the case upon appeal from the judgment; and the license shall be restored upon satisfaction of the judgment.

(Chapter 76, Laws of 1929.)